

## Disclaimer

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310 CMR 60.00: AIR POLLUTION CONTROL FOR MOBILE SOURCES

Section

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60.01: General Regulations to Prevent Air Pollution

(1) No person owning, leasing, or controlling the operation of any air contamination source shall willfully, negligently, or through failure to provide necessary equipment or to take necessary precautions, permit any emission from said air contamination source or sources of such quantities of air contaminants which will cause, by themselves or in conjunction with other air contaminants, a condition of air pollution.

(2) (a) Accurate Submittal to the Department No person shall make any false, inaccurate, incomplete, or misleading statements in any application, record, report, plan, design, statement or document which that person submits to the Department pursuant to M.G.L. c. 111, §§ 142A through 142M, M.G.L. c. 111, § 150A, M.G.L. c. 21H, or 310 CMR 60.00 *et seq.*

(b) Accurate and Complete Record Keeping No person shall make any false, inaccurate, incomplete, or misleading statements in any record, report, plan, file, log, or register which that person is required to keep pursuant to M.G.L. c. 111, §§ 142A through 142M, M.G.L. c. 111, § 150A, M.G.L. c. 21H, or 310 CMR 60.00 *et seq.* Such records shall be made available to the Department for inspection upon request.

(c) Certification Any person providing information required to be submitted to the Department pursuant to M.G.L. c. 111, §§ 142A through 142M, M.G.L. c. 111, § 150A, M.G.L. c. 21H, or 310 CMR 60.00 *et seq.* shall make the following certification: "I certify that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

60.02: Massachusetts Motor Vehicle Emissions Inspection and Maintenance Program

(1) Introduction.

(a) Authority. 310 CMR 60.02 is promulgated by the Commissioner of the Department of Environmental Protection pursuant to M.G.L. c. 111, § 142M and M.G.L. c. 21A, §§ 2(28) and 16.

(b) Headings are for convenience only and do not affect the substance of 310 CMR 60.02.

(c) Purpose. 310 CMR 60.02 establishes a program to inspect the emissions of motor vehicles and to ensure that a vehicle that fails an emissions inspection is repaired properly in a reasonable time period, the motorist obtains a waiver for the vehicle, or the vehicle's registration is suspended in accordance with 540 CMR 4.00.

(d) Severability. Each subsection of 310 CMR 60.02 shall be deemed severable, and in the event that any subsection of 310 CMR 60.02 is held invalid, the remainder shall continue in full force and effect.

(2) Definitions. The following words and phrases when used in 310 CMR 60.00, except as otherwise required by the context, have the following meanings.

All Wheel Drive Vehicle means a motor vehicle in which all four wheels are constantly and automatically connected to the drive train.

Assembled Vehicle means a unique vehicle constructed from parts of other motor vehicles.

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Certified Configuration means the constituent parts of a motor vehicle necessary to maintain the vehicle in conformance with any approval or order issued by the U.S. Environmental Protection Agency or the California Air Resources Board certifying the vehicle as meeting applicable emissions standards.

Commissioner means the commissioner of the Department of Environmental Protection or his or her designee.

Cutpoint means the motor vehicle emissions level above which a vehicle fails an emissions inspection and at or below which a vehicle passes an emissions inspection.

Data Link Connector means the connector where diagnostic scan tools interface with the vehicle's on-board diagnostic system.

Department means the Massachusetts Department of Environmental Protection.

Dynamometer means a device which applies a load to a vehicle's drive wheels during an emissions inspection while the vehicle is being operated in a stationary and secure position to simulate actual driving conditions.

Diagnostic Trouble Code means a code stored in the On-board Diagnostics (OBD) system indicating the reason the malfunction indicator light is (or was) illuminated.

Diesel Engine means an engine using a compression ignition thermodynamic cycle.

Diesel Vehicle means a vehicle powered by a diesel engine.

Emission Control System means any device or combination of parts designed by the manufacturer to control the emissions of a motor vehicle.

Emissions Certification Category means the category of vehicles certified to the same emissions standard within a vehicle class.

Emissions Inspection or Inspection means the procedures specified by the Department that determine whether a vehicle meets emissions inspection standards provided in 310 CMR 60.02(11) or 310 CMR 60.02(12).

Emission Repair means repair of a motor vehicle for the purpose of such vehicle passing or attempting to pass an emissions inspection.

Glider Kit means a vehicle body, including cab, which is placed upon the chassis with its original drive train, of a vehicle with a Gross Vehicle Weight Rating (GVWR) of more than 10,000 pounds that changes the function or capacity of the original chassis, and which creates a need for a change to the Vehicle Identification Number (VIN) because the cab has been replaced. Modifications to the original chassis may be necessary to allow installation of the glider kit.

Gross Vehicle Weight Rating (GVWR) means the maximum loaded weight for which the vehicle is designed, as specified by the vehicle manufacturer.

Heavy Duty Diesel Vehicle means a motor vehicle with a GVWR greater than 14,000 pounds, equipped with a diesel engine, and operating on any fuel or combination of fuels.

Heavy Duty Nondiesel Vehicle means a motor vehicle with a GVWR greater than 14,000 pounds, not equipped with a diesel engine, and operating on any fuel or combination of fuels.

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Initial Inspection means the first inspection of a vehicle under 310 CMR 60.02 or any subsequent inspection where the vehicle passed the previous inspection, received a waiver, or received an economic hardship failure repair extension.

Inspection See definition for emissions inspection.

Inspection Certificate means a written statement indicating:

- (a) that the required inspection for a motor vehicle has been performed and the motor vehicle inspected has passed or failed said inspection; or
- (b) that the motor vehicle is exempt from the inspection.

Said certificate shall be in a form prescribed by the Registrar and the Commissioner.

Inspection Station means a facility that is licensed by the Registry to conduct motor vehicle safety and emissions inspections.

Inspection Fee means the fee established by the Commonwealth and paid by the motorist for a motor vehicle inspection pursuant M.G.L. c. 7, § 3B.

Inspector means any properly trained person with a valid certification from the Department and licensed by the Registry to perform motor vehicle safety and emissions inspections.

Kit Vehicle means a unique vehicle or a replica of any vehicle, the production volume of which is less than 500 vehicles per year.

Light-duty Diesel Vehicle means a vehicle with a GVWR of 8,500 pounds or less, equipped with a diesel engine, and operating on any fuel or combination of fuels.

Light-duty Nondiesel Vehicle means a vehicle with a GVWR of 8,500 pounds or less, not equipped with a diesel engine, and operating on any fuel or combination of fuels.

Malfunction Indicator Light means the instrument panel light used by the OBD system to notify the vehicle operator of an emissions related problem.

Medium-duty Diesel Vehicle means a vehicle with a GVWR greater than 8,500 and less than or equal to 14,000 pounds, equipped with a diesel engine, and operating on any fuel or combination of fuels.

Medium-duty Nondiesel Vehicle means a vehicle with a GVWR greater than 8,500 and less than or equal to 14,000 pounds, not equipped with a diesel engine, and operating on any fuel or combination of fuels.

Model-year means the vehicle manufacturer's annual production period for each engine family which includes January 1<sup>st</sup> of a calendar year or, if the manufacturer has no annual production period for the engine family, the year in which the vehicle was manufactured. If a motor vehicle is manufactured in two or more states, the model-year shall be determined by the date on which the chassis is completed.

Motor Vehicle or Vehicle means any equipment or mechanical device propelled primarily on land by power other than muscular power, including passenger vehicles and trucks operating on any fuel type. "Motor vehicle" or "vehicle" does not mean railroad or railway engines or cars, vehicles operated by the system known as trolley motor or trackless trolley, vehicles used primarily for off roadway use such as construction and farm equipment, or devices used for domestic purposes such as a lawnmower or snowblower.

Motor Vehicle Inspection and Maintenance Program means the program for the inspection and repair of motor vehicles conducted in accordance with the combined emissions and safety regulations established by the Department and the Registry pursuant 310 CMR 60.02 and 540 CMR 4.00, respectively.

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Motorist means the person in control of a vehicle subject to the motor vehicle inspection and maintenance program.

New Vehicle means a motor vehicle to which the equitable or legal title has never been transferred to an ultimate purchaser.

On-board Diagnostics System (OBD System) means a system, as installed and programmed by the original equipment manufacturer or its designee, or by a vendor recognized or authorized by the U.S. Environmental Protection Agency or the California Air Resources Board or the original equipment manufacturer to install or program such system according to the requirements of the U.S. Environmental Protection Agency or the California Air Resources Board of vehicle components and condition monitors and sensors controlled by an on-board computer running software designed to signal the motorist when a problem is detected with an emissions control system or component, or with the on-board diagnostic system.

On-board Diagnostics Test (OBD Test) means an assessment of the condition of a vehicle's emissions control system, including the vehicle's OBD system, pursuant to Department inspection procedures established pursuant to 310 CMR 60.02, including workstation software prompts.

Opacity Test means an emissions test of a diesel vehicle's exhaust performed by measuring the density of the smoke that the vehicle emits. Such test may be performed while the vehicle is under load on a dynamometer according to Department-approved inspection procedures.

Original Equipment Manufacturer means the entity that originally manufactured the motor vehicle or motor vehicle engine prior to sale to the ultimate purchaser.

Person means an individual, agency or other government entity, corporation, partnership, association, or similar entity.

Readiness Codes means the codes stored by a vehicle's OBD system that indicate whether a vehicle's OBD system has been able to complete its checks for proper functioning of the vehicle's emissions-related components and systems.

Registered Repair Technician means any person registered with the Department who meets the Department's standards for registration.

Registrant means the person to whom a certification of registration is issued pursuant to 540 CMR 2.00 *et seq.*

Registrar means the Registrar of the Registry of Motor Vehicles.

Registry means the Registry of Motor Vehicles.

Reinspection means any emissions inspection performed on a motor vehicle after it has failed an emissions inspection and repair has been attempted.

Repair Form means the form provided by the inspector to the motorist whose vehicle has failed the emissions inspection to record the type and cost of emissions repairs performed on the vehicle.

SAE JI667 Opacity Test means *The Snap-Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicle*, 1996-02, issued by the Society of Automotive Engineers (SAE), as modified by the Department.

Tampering means the act of a person to remove or render inoperative any device or element of design installed on or in a motor vehicle in compliance with regulations under § 203(a) of the federal Clean Air Act, or to cause a vehicle to operate using a fuel which the vehicle is not certified to use, or to operate on a fuel not approved or certified by the U.S. Environmental Protection Agency or the California Air Resources Board.

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Transient Loaded-mode Test means the portion of the emissions inspection administered while the vehicle is operating on a dynamometer.

Two-speed Idle Test means an emissions measurement taken while a vehicle is operating first at idle, then while the engine is operating at 2500 revolutions per minute with the transmission in neutral, and a final time when the vehicle is again operating at idle.

Ultimate Purchaser means, with respect to a motor vehicle or motor vehicle engine, the first person who in good faith purchases or leases the motor vehicle or motor vehicle engine for purposes other than resale.

Used Motor Vehicle means a motor vehicle owned or leased by any person other than the ultimate purchaser for purposes other than resale.

Vehicle Class means a category to which a vehicle is assigned by the U.S. Environmental Protection Agency or the California Air Resources Board pursuant to their requirements for certifying the vehicle as meeting applicable emissions standards.

Vehicle Identification Number or VIN means a unique number assigned to each vehicle by the vehicle manufacturer or the Registry.

Workstation means the complete set of inspection equipment approved by the Department and required by the Registrar by or pursuant to 540 CMR 4.00 for an inspection station.

(3) Applicability.

(a) The following motor vehicles are subject to emissions inspection except as otherwise provided at 310 CMR 60.02(3)(b) or (c):

1. all motor vehicles registered in Massachusetts;
2. any motor vehicle owned or operated by a federal agency in Massachusetts (regardless of whether such vehicles are registered in Massachusetts); and
3. diesel vehicles with a GVWR greater than 10,000 pounds operating on Commonwealth roads but not registered in Massachusetts.

(b) Prior to October 1, 2008, the following motor vehicles are exempt from the emissions inspection:

1. any motor vehicle with a model year earlier than 1984;
2. any motor vehicle for 24 months from the date of registration in Massachusetts after sale or lease to the ultimate purchaser (for the sale or lease of vehicles beginning with model year 1998);
3. tactical military vehicles;
4. any motor vehicle or class of motor vehicles determined by the Department to present prohibitive emissions inspection problems or to be inappropriate for emissions inspection;
5. any motor vehicle operated exclusively by electric power;
6. any motorcycle or moped; and
7. any vehicle that has been granted a waiver or exemption by the U.S. Environmental Protection Agency or the California Air Resources Board from emissions standards or equipment requirements to the extent of said waiver or exemption.

(c) Effective beginning October 1, 2008, the following motor vehicles are exempt from the emissions inspection:

1. any diesel vehicle with a model year earlier than 1984;
2. any light duty diesel vehicle with a model year earlier than 1997 or 15 or more model years old;
3. any medium duty diesel vehicle with a GVWR of not more than 10,000 pounds and with a model year earlier than 2007 or 15 or more model years old;
4. any light duty nondiesel vehicle with a model year earlier than 1996 or 15 or more model years old;
5. any medium duty nondiesel vehicle with a model year earlier than 2008 or 15 or more model years old;

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6. any heavy duty nondiesel vehicle not equipped with an OBD system or 15 or more model years old;
7. any new vehicle registered first in Massachusetts for the motor vehicle inspection upon its initial registration to the ultimate purchaser, except a kit vehicle;
8. tactical military vehicles;
9. any motor vehicle or class of motor vehicles determined by the Department to present prohibitive emissions inspection problems or to be inappropriate for emissions inspection;
10. any motor vehicle operated exclusively by electric power;
11. any vehicle that has been granted a waiver or exemption by the U.S. Environmental Protection Agency or the California Air Resources Board from emissions standards or equipment requirements to the extent of said waiver or exemption; and
12. any motorcycle or moped.

(4) Scheduling of Emissions Inspections Prior to October 1, 2008.

(a) Motor Vehicles Registered in Massachusetts. The registrant of each motor vehicle shall obtain an emissions inspection for a motor vehicle in accordance with 310 CMR 60.02. Registrants shall submit their vehicles for inspection no later than the month and year of expiration on the previously issued inspection certificate.

1. First Initial Inspection. The registrant of each motor vehicle shall obtain an emissions inspection for that motor vehicle as part of its first motor vehicle inspection following the expiration of the exemption at 310 CMR 60.02(3)(b)2.
2. A registrant of a vehicle that failed to obtain an emissions inspection pursuant to the schedule at 310 CMR 60.02(4)(a)1. and (4)(a)4. or instead received only a safety inspection shall obtain an initial emissions inspection the next time the vehicle is submitted for a motor vehicle inspection.
3. Late Safety Inspection. Notwithstanding 310 CMR 60.02(4)(a)2. and (4)(a)4., the registrant of a motor vehicle shall obtain an initial emissions inspection for the motor vehicle if the vehicle is presented for inspection 60 days or more after the vehicle was due for a safety inspection.
4. After First Initial Inspection. The registrant of each motor vehicle shall obtain an emissions inspection for a motor vehicle every other time the vehicle is submitted for a motor vehicle inspection except in accordance with 310 CMR 60.02(4)(c), (4)(a)2. and (4)(a)3.

(b) Initial Registration of Motor Vehicles. For any motor vehicle first registered in Massachusetts, the motorist shall obtain an emissions inspection as part of his or her motor vehicle inspection for the vehicle within seven days from the date the vehicle is first registered in Massachusetts unless otherwise exempt in accordance with 310 CMR 60.02(3)(b).

(c) Inspections Upon Transfer. For any used motor vehicle, the motorist shall obtain an emissions inspection as part of his or her motor vehicle inspection for the vehicle within seven days of the date on which the motor vehicle is registered in Massachusetts to the new owner unless otherwise exempt in accordance with 310 CMR 60.02(3)(b)1., 3., 4., 5., 6., or 7.

(d) Massachusetts Vehicles not Located in State. For any motor vehicle which is not garaged or operated in Massachusetts at the time that vehicle's emissions inspection was due, a motorist may operate the vehicle for 15 days after the vehicle's return to Massachusetts, provided said motor vehicle bears proof satisfactory to the Department of an adequate emissions inspection from another jurisdiction. The motorist shall obtain the vehicle's initial emissions inspection within said 15 days. A motorist also may obtain an initial inspection prior to the expiration of the vehicle's current inspection certificate.

(e) Diesel Vehicles with a GVWR of over 10,000 Pounds. Diesel vehicles with a GVWR of over 10,000 pounds registered in Massachusetts are subject to 310 CMR 60.02(4)(a) through (d). In addition, all diesel vehicles with a GVWR of over 10,000 pounds operating on Massachusetts roads are subject to emissions testing during roadside inspections, and emissions inspection standards are applicable to emissions testing conducted during roadside inspections.

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(f) Inspections for Program Evaluation. The Department may require a registrant to have his or her vehicle inspected upon notice from the Department for program evaluation. If the vehicle fails such inspection, the registrant may choose not to have the vehicle repaired and present the vehicle for inspection as provided at 310 CMR 60.02(4)(a).

(5) Scheduling of Emissions Inspections Effective Beginning October 1, 2008.

(a) Motor Vehicles Registered in Massachusetts. The registrant of each motor vehicle shall obtain an emissions inspection every time the vehicle is submitted for a motor vehicle inspection in accordance with 310 CMR 60.02. Registrants shall submit their vehicles for inspection no later than the last day of the month and year of expiration on the previously issued inspection certificate.

(b) Initial Inspection of New Kit Vehicles. When any kit vehicle is first registered in Massachusetts, including upon sale or lease to the ultimate purchaser or completion of assembly, the registrant shall obtain a visual inspection in accordance with 310 CMR 60.02(12)(c). If the certified configuration installed in the kit vehicle is from a model year vehicle subject to an OBD test, the kit vehicle shall also receive an OBD test for the model year of the certified configuration installed in the kit vehicle.

(c) Initial Registration of Motor Vehicles. A motorist shall obtain an emissions inspection as part of the motor vehicle inspection for the vehicle within seven days from the date the vehicle is first registered in Massachusetts unless exempt under 310 CMR 60.02(3)(c).

(d) Inspections upon Transfer. For any used motor vehicle, the motorist shall obtain an emissions inspection as part of his or her motor vehicle inspection for the vehicle within seven days of the date on which the motor vehicle is registered in Massachusetts to the new owner unless exempt in accordance with 310 CMR 60.02(3)(c).

(e) Massachusetts Vehicles not Located in State. For any motor vehicle which is not garaged or operated in Massachusetts at the time that vehicle's emissions inspection was due, a motorist may operate the vehicle for 15 days after the vehicle's return to Massachusetts, provided said motor vehicle bears proof satisfactory to the Department of an adequate emissions inspection from another jurisdiction. The motorist shall obtain the vehicle's initial emissions inspection within said 15 days.

(f) Diesel Vehicles with a GVWR Greater Than 10,000 Pounds. Diesel vehicles with a GVWR greater than 10,000 pounds registered in Massachusetts are subject to 310 CMR 60.02(5)(a) through (e), (g) and (h). In addition, all diesel vehicles with a GVWR greater than 10,000 pounds operating on Massachusetts roads are subject to emissions testing during roadside inspections, and emissions inspection standards are applicable to emissions testing conducted during roadside inspections.

(g) Inspections for Program Evaluation. The Department may require a registrant to have his or her vehicle inspected upon notice from the Department for program evaluation. If the vehicle fails such inspection, the registrant may choose not to have the vehicle repaired and present the vehicle for inspection as provided at 310 CMR 60.02(5)(a).

(h) A motorist may obtain an initial inspection at any time prior to the month and year of expiration on the inspection certificate previously issued where the vehicle passed the previous inspection, received a waiver, or received an economic hardship failure repair extension.

(6) Motorist Requirements.

(a) Inspection Documents. When presenting a motor vehicle for an inspection, a motorist shall provide the following documents to the inspector to identify the vehicle by make, model-year, vehicle identification number, and license plate number:

1. a valid certificate of registration; and
2. if the inspection is a reinspection, a valid and completed emissions repair form.

(b) Inspection Fee. The motorist shall pay the inspection fee when presenting a motor vehicle for an inspection. No fee is required for an inspection that is not completed.

(c) Inspection Failure. If a vehicle fails an initial inspection, the motorist either shall repair the vehicle such that it passes a reinspection, or shall obtain a waiver or an economic hardship repair extension within 60 days.

(d) Referrals. The motorist shall present the vehicle to a location as instructed by the Registry, the Department, or via printed instructions from a workstation, for purposes related to emissions inspection.

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- (7) Emission Test Applicability Prior to October 1, 2008.
- (a) Transient Loaded-mode Test. The following motor vehicles are subject to the transient loaded-mode test:
1. all motor vehicles older than model year 1996 with a GVWR of 10,000 pounds or less and operating on any fuel type, except diesel fuel; and
  2. all motor vehicles model year 1996 or newer with a GVWR of 10,000 pounds or less and operating on any fuel type, except diesel fuel, that lack an on-board diagnostic system.
- (b) Two-speed Idle Test. All motor vehicles with a GVWR of more than 10,000 pounds and operating on any fuel type, except diesel fuel, and lacking an on-board diagnostic system are subject to the two-speed idle test. All motor vehicles, including all-wheel drive vehicles, that the Department deems unsuitable for a transient loaded-mode test as provided for in the Department-approved inspection procedures also are subject to the two-speed idle test.
- (c) On-board Diagnostics Test. The following motor vehicles are subject to the on-board diagnostic test in accordance with Department-approved inspection procedures:
1. all motor vehicles model year 1996 or newer operating on any fuel type, except diesel, and equipped with an on-board diagnostics system; and
  2. all motor vehicles model year 1997 or newer operating on diesel fuel and equipped with an on-board diagnostics system.
  3. Alternative Test. Any class of motor vehicles otherwise subject to the on-board diagnostics test is subject to the transient loaded-mode test, the two-speed idle test, the opacity test, or the SAE J1667 opacity test in accordance with 310 CMR 60.02(7)(a), (b), (d) and (e) if the Department determines that the vehicle class is not compatible with the then existing OBD test software or hardware. Any such vehicle class subject to an alternative test also may be subject to any part of the on-board diagnostics test for which the vehicle or class of vehicles is suitable and the test hardware and software is compatible and a visual inspection of the malfunction indicator light.
- (d) Opacity Test. All diesel vehicles with a GVWR of 10,000 pounds or less are subject to an opacity test appropriate for their weight and size as determined by the Department. Motorists with vehicles with a GVWR of 10,000 pounds or less and more than 8,500 pounds and subject to the opacity test may elect to have their vehicle tested by the SAE J1667 test instead.
- (e) SAE J1667<sup>1</sup> Opacity Test. All diesel vehicles with a GVWR greater than 10,000 pounds and not otherwise subject to an OBD test are subject to the SAE J1667 opacity test. The Department may exempt from roadside emissions inspection such vehicles if the vehicle has been tested in another state or jurisdiction.
- (f) Fuel Cap Test. All motor vehicles, except those vehicles model year 2004 and newer that receive an on-board diagnostics test, are subject to the fuel cap test.
- (g) The Department may waive the requirement for any test for classes of vehicles that the Department determines are highly likely to pass such test based on statistical data from other emissions tests, including data from other states.
- (h) Engine Switching. A motor vehicle with an exchanged or replaced engine is subject to the emissions inspection standards for the fuel type, model-year, and type of vehicle chassis contained on its certificate of registration.
- (i) Assembled Vehicles. An assembled or reconstructed vehicle, including a vehicle with a prefabricated body, is subject to the emissions inspection applicable to the fuel type, model year, and type of vehicle chassis indicated on the vehicle's certificate of registration.
- (j) Kit Vehicles. Registrants of kit vehicles may request the Department to apply less stringent emissions standards for the transient loaded-mode test if the vehicle is operated for less than 2000 miles in the previous 12 months.

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<sup>1</sup> Copies of SAE J1667 may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001.

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(8) Emission Test Applicability Effective Beginning October 1, 2008.

(a) On-board Diagnostics Test. Unless exempt pursuant to 310 CMR 60.02(3)(c), the following motor vehicles are subject to the on-board diagnostic test in accordance with Department-approved inspection procedures:

1. all light-duty nondiesel motor vehicles model year 1996 or newer;
2. all light-duty diesel motor vehicles model year 1997 or newer,
3. all medium-duty diesel motor vehicles model year 2007 or newer;
4. all medium-duty nondiesel motor vehicles model year 2008 or newer; and
5. all heavy-duty diesel and nondiesel motor vehicles equipped with OBD systems.

(b) SAE J1667<sup>2</sup> Opacity Test.

1. Unless exempt pursuant to 310 CMR 60.02(3)(c), diesel vehicles with a GVWR greater than 10,000 pounds and not otherwise subject to an OBD test are subject to the SAE J1667 opacity test. The Department may exempt from roadside emissions inspection such vehicles if the vehicle has been tested in another state or jurisdiction.
2. Any diesel vehicle subject to the opacity test pursuant to 310 CMR 60.02(3)(a) and (c) and 60.02(8)(b)1., shall not be subject to such test prior to April 1, 2009. After that date any such diesel vehicle shall not be subject to such opacity test if the test software or hardware has not been approved by the Department for use.

(c) Engine Switching. A motor vehicle with an exchanged or replaced engine shall be subject to the engine switching requirements in 310 CMR 60.02(12)(d).

(d) Assembled Vehicles. An assembled or reconstructed vehicle, including a vehicle with a prefabricated body, is subject to the emissions inspection applicable to the fuel type, model year, and type of vehicle chassis indicated on the vehicle's certificate of registration.

(e) Kit Vehicles. Kit vehicles are subject to an emissions test based on the year of the certified configuration installed in the kit vehicle:

1. if the certified configuration installed in the kit vehicle is from a model year vehicle subject to an OBD test, then the kit vehicle shall be subject to the kit vehicle visual test upon initial registration and to annual OBD testing requirements for the model year of the certified configuration installed in the kit vehicle; or
2. if the certified configuration installed in the kit vehicle is from a model year vehicle not subject to an OBD test, then the kit vehicle shall be subject to the kit vehicle visual test upon initial registration and transfer of ownership.

(f) Glider Kits. Vehicles with glider kits are subject to an emissions test based on the year of the chassis on which the glider kit is installed:

1. if the chassis is subject to an OBD test, then the vehicle shall be subject to a visual inspection upon initial registration to verify that the OBD system is properly installed and to OBD testing requirements for the model year of the chassis, or
2. if the chassis is not subject to an OBD test, then the vehicle shall be subject to an opacity test if the year of the chassis and fuel type of the engine are subject to an opacity test.

(9) Advisory Scan of New Motor Vehicles Effective Beginning October 1, 2008. For any vehicle required to be equipped with an OBD system and registered first in Massachusetts after sale or lease to the ultimate purchaser, except a kit vehicle, the registrant shall obtain an advisory scan of the vehicle's OBD system. The advisory scan is not an emissions inspection. The scan may be performed as part of the pre-delivery motor vehicle inspection performed by the seller if the seller is so authorized by the Registry. The items or characteristics to be scanned and the properties that constitute a problem shall be established by the Department. The items or characteristics to be scanned and the properties that constitute a problem shall be based on: the type of vehicle, the vehicle fuel type(s), the model year of the vehicle, vehicle certification requirements of the U.S. Environmental Protection Agency or the California Air Resources Board, and the vehicle's OBD system design. A list of the items or characteristics to be scanned and the properties that constitute a problem shall be published by the Department on the web site for the Enhanced Emissions and Safety Test Program. Upon completion of the advisory scan of a new motor vehicle, the inspector, or a person authorized by the Registry if the seller is authorized to perform the advisory scan as part of the pre-delivery motor vehicle inspection, shall provide to the motorist a printed report of the vehicle's advisory scan results in the format required by the Department.

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(10) Inspector Procedures.

- (a) The inspector shall perform emissions inspections in accordance with 310 CMR 60.02 and all Department-approved inspection procedures, including all workstation software prompts, at inspection stations licensed by the Registry.
- (b) The inspector shall perform emissions inspections using Department-approved equipment and shall perform all Department-required quality control and maintenance procedures on the equipment and adhere to all safety procedures as provided in the Department-approved inspection procedures.
- (c) The inspector shall record the information identified as provided in the Department's emissions inspection procedures and the workstation software prompts.
- (d) Once initiated, the inspector shall complete an emissions inspection. The inspector shall terminate the inspection if an unsafe condition or workstation error or inspector error arises during the inspection process.
- (e) The inspector shall refuse to perform an emissions inspection on a motor vehicle if:
  - 1. the motorist fails to present the documentation specified at 310 CMR 60.02(6)(a)1.;
  - 2. the vehicle is carrying explosives or other materials considered to be a safety hazard by the inspector;
  - 3. fuel, oil, or other leaks are observed by the inspector that are considered a safety hazard by the inspector; or
  - 4. the inspector observes any other hazard that would compromise the safe conduct of the inspection.
- (f) Upon completion of the emissions inspection, the inspector shall provide to the motorist a printed inspection report of the vehicle's inspection results in the format required by the Department.
- (g) Upon completion of the motor vehicle inspection, the inspector shall affix an inspection certificate to the windshield of the vehicle inspected indicating the proper results of the inspection.

(11) Emissions Inspection Standards Prior to October 1, 2008. A motor vehicle shall fail the emissions inspection if it does not meet the applicable standards established in 310 CMR 60.02(11). The emission standards shall be applicable to cars and trucks, as defined by the U.S. Environmental Protection Agency or the California Air Resources Board when the vehicle was certified.

- (a) Transient Loaded-mode Emissions Test Standards. Vehicles subject to the transient loaded-mode test shall have emissions no higher than the cutpoints listed in 310 CMR 60.02(11)(a): *Table A* as indicated for the vehicle's class and model year. The Department may establish in the Department-approved inspection procedures alternative test cycles that have equivalent stringency to these standards. The Department may adjust the standards at its discretion to be less stringent than the cutpoints listed in 310 CMR 60.02(11)(a): *Table A* during the implementation phase of the emissions inspection program to address: air pollution; motorist convenience; inspection failure rates; or, motorists' difficulty in obtaining proper repairs.

60.02: continued

**TABLE A**  
**Transient Loaded – Mode Emission Test Cutpoints in Grams Per Mile**

	Hydrocarbons	Carbon Monoxide	Oxides of Nitrogen
<b>Cars</b>			
1996 and newer	0.80	15.0	2.0
1991 – 1995	1.2	20.0	2.5
1984 – 1990	2.0	30.0	3.0
<b>Trucks less than or equal to 6,000 pounds GVWR</b>			
1996 and newer			
3,750 LVW or less	0.80	15.0	2.0
Greater than 3,750 LVW	1.0	20.0	2.5
1991 – 1995	2.40	60.0	3.0
1988 – 1990	3.20	80.0	3.5
1984 – 1987	3.20	80.0	7.0
<b>Trucks greater than 6,000 pounds GVWR</b>			
1996 and newer			
5,750 ALVW or less	1.00	20.0	2.5
greater than 5,750 ALVW	2.40	60.0	4.0
1991 – 1995	2.40	60.0	4.5
1988 – 1990	3.20	80.0	5.0
1984 – 1987	3.20	80.0	7.0

LVW means loaded vehicle weight.

ALVW means adjusted loaded vehicle weight.

(b) Two-speed Idle Test Standards. Vehicles subject to the two-speed idle test shall have emissions no higher than the cutpoints indicated for the vehicle’s model year in Table B. The following emissions control devices or equipment also shall be present and functional as indicated by procedures specified by the Department: catalytic converter, air pump, exhaust gas recirculation valve, and positive crankcase ventilation valve.

**TABLE B**  
**Two-speed Idle Emission Test Cutpoints**

Model Years	Hydrocarbons (parts per million)	Carbon Monoxide (percent per standard volume)
<b>All Vehicle Classes</b>		
1987 and newer	100	0.60
1984 – 1986	220	0.80

(c) Opacity Standards for Diesel Vehicles. Vehicles subject to an opacity test shall have emissions opacity no greater than the cutpoints in Table C as indicated for the vehicles class and model year.

**TABLE C**  
**Opacity Test Cutpoints**

	Percent Opacity
Diesel cars and trucks less than 8,500 pounds GVWR	20%
Diesel trucks 8,500 to 10,000 pounds GVWR	40%
Diesel trucks greater than 10,000 pounds GVWR	
1984 – 1990 model years	55%
1991 and newer	40%
Diesel buses greater than 10,000 pounds GVWR	
1984 – 1993 model years	40%
1994 and newer	30%

60.02: continued

(d) Fuel Cap (Pressure Decay) Test. Using a Department approved method, the fuel cap shall fail the pressure test if it loses more than six inches of water column (WC) pressure over a period of ten seconds from a starting pressure of  $28 \pm$  one inch of water.

(e) On-board Diagnostics Test. A vehicle shall fail the on-board diagnostics test if:

1. the data link connector is missing, has been tampered with, or malfunctions, or the OBD system has been altered in such a way as to make OBD system testing impossible;
2. the malfunction indicator light is commanded by the OBD system to be illuminated;
- or,
3. the vehicle's OBD system reveals insufficient readiness codes are set for the components of the OBD system except as provided for reinspections at 310 CMR 60.02(12)(c).

(12) Emissions Inspection Standards Effective Beginning October 1, 2008. A motor vehicle shall fail the emissions inspection if it does not meet the applicable standards established in 310 CMR 60.02(12).

(a) Opacity Standards for Diesel Vehicles. Any vehicle subject to an opacity test shall have emissions opacity no greater than the cutpoints in Table D as indicated for that vehicle's class and model year.

**TABLE D**  
**Opacity Test Cutpoints**  
**Effective Beginning October 1, 2008**

	Percent Opacity
Diesel trucks greater than 10,000 pounds GVWR	
1984 – 1990 model years	40%
1991 – 1996 model years	30%
1997 and newer model years	20%
Diesel buses greater than 10,000 pounds GVWR	
1984 – 1987 model years	40%
1988 – 1993 model years	30%
1994 and newer model years	20%

(b) On-board Diagnostics Test. A vehicle shall fail the on-board diagnostics test if:

1. the data link connector is missing, has been tampered with, or malfunctions, or the OBD system has been altered in such a way as to make OBD system testing impossible;
2. the malfunction indicator light is commanded by the OBD system to be illuminated;
3. the malfunction indicator light does not illuminate properly when commanded on by the OBD system;
4. the vehicle's OBD system reveals insufficient readiness codes, for light-duty nondiesel vehicles as prescribed in 40 CFR 85.2222 or as otherwise determined by the Department in consultation with the U.S. Environmental Protection Agency, and as determined by the Department for all other vehicles, are set for the components of the OBD system except as provided for reinspections at 310 CMR 60.02(14)(b); or
5. the vehicle's OBD system reveals other OBD system malfunctions or conditions as identified by the Department.

(c) Kit Vehicle Visual Test. A kit vehicle shall be subject to a visual test to verify compliance with the following emissions requirements; and kit vehicle registrants shall supply any documentation required by the inspector, the Department, or the registry:

1. The components of the drivetrain (*e.g.*, engine, transmission, and differential) shall be exclusively or substantially used or rebuilt. Regardless of the combination of new and used components, the engine shall be used, or used and rebuilt. The engine block and cylinder head(s) shall be used; other components of the engine may be new. For purposes of 310 CMR 60.02(12)(c), "used" means the component has been in a vehicle that has been titled to an ultimate purchaser. For purposes of 310 CMR 60.02(12)(c), a "rebuilt component" is defined as a used component which has been refurbished with new or other used parts;

60.02: continued

2. Kit vehicles shall have the same transmission configuration (*i.e.*, manual, automatic, semi-automatic, and number of forward gears) as the originally certified configuration, and have an N/V ratio (speed of vehicle in miles per hour/speed of engine in revolutions per minute) which matches the N/V ratio of the originally certified configuration within 3% in every gear;
  3. All emissions-related components and settings shall conform in all material respects to those of one previously certified configuration (all emissions-related components shall match or be traceable to one previously certified configuration);
  4. All catalytic converters, oxygen sensors, and charcoal canisters shall be new, original equipment parts, or replacement parts equivalent to the original equipment parts;
  5. If the originally certified configuration required unleaded fuel, then the vehicles shall have fuel filler neck restrictors and unleaded fuel labels which meet the requirements of 40 CFR 80.24;
  6. The vehicle weight of the kit configuration can be no more than 500 pounds greater than the weight of the originally certified configuration; and
  7. Each vehicle and its accompanying documentation shall be clearly labeled as to the make, model year, chassis year, engine year, engine family, subfamily, and tune-up specifications represented by the originally certified vehicle.
- (d) Engine Switching Requirements. A motor vehicle with an exchanged or replaced engine shall be subject to the following requirements:
1. the vehicle configuration following the engine switch shall be a certified configuration;
  2. the certified configuration shall be of the same emissions certification category, as established by the U.S. Environmental Protection Agency or the California Air Resources Board;
  3. engine switching between vehicle California-certified and federally-certified vehicles is prohibited;
  4. engine switching between vehicle classes is prohibited; and
  5. for heavy-duty vehicles, the engine switched into a heavy duty truck shall be of a certified configuration of the same model year or newer as the year of the engine originally installed in the vehicle.
- (13) Reinspections Prior to October 1, 2008.
- (a) The inspector shall inspect every vehicle presented for reinspection in accordance with the emissions inspection requirements of 310 CMR 60.02 and Department-approved inspection procedures.
  - (b) The inspector shall perform the reinspection in accordance with the same requirements as an initial emissions inspection for the failed portion of the inspection. Thus, if a vehicle obtained a transient loaded mode test, a two speed idle test, an opacity test, an OBD test or a visual inspection of the malfunction indicator light for the initial inspection pursuant to 310 CMR 60.02(7), the vehicle shall receive the same test(s) on reinspection.
  - (c) Notwithstanding 310 CMR 60.02(13)(b), if a vehicle failed the on-board diagnostics test during the most recent initial inspection and insufficient readiness codes are set at the reinspection, the inspection shall abort and the inspector shall turn the vehicle away.
  - (d) If a vehicle returns for a safety reinspection 60 days or more after failing an initial safety inspection that did not include an emissions test, the vehicle shall be subject to an emissions and safety inspection at that time. Such inspection shall be considered the vehicle's initial emissions inspection.
  - (e) If the vehicle passes reinspection, the vehicle shall receive an emissions inspection certificate indicating compliance with emissions inspection requirements.
  - (f) Unless a vehicle that has failed an emissions inspection passes a reinspection within 60 days or obtains a waiver, the vehicle shall not be operated on a public road and the registration of any such Massachusetts-registered motor vehicle shall be suspended in accordance with 540 CMR 4.00.
- (14) Reinspections Effective Beginning October 1, 2008.
- (a) The inspector shall inspect every vehicle presented for reinspection in accordance with the emissions inspection requirements of 310 CMR 60.02, Department-approved inspection procedures, and workstation software prompts.

60.02: continued

(b) If a vehicle failed the on-board diagnostics test during the most recent initial inspection and does not meet readiness criteria as prescribed by 310 CMR 60.02(12)(b)4. at the reinspection, the vehicle shall be turned away consistent with Department-approved inspection procedures. A vehicle not meeting readiness criteria as prescribed by 310 CMR 60.02(12)(b)4. upon reinspection is not considered to have received an emissions reinspection.

(c) If the vehicle passes reinspection, the vehicle shall receive an emissions inspection certificate indicating compliance with emissions inspection requirements.

(d) Unless a vehicle that has failed an emissions inspection passes a reinspection within 60 days, obtains a waiver, or obtains an economic hardship failure repair extension, the vehicle shall not be operated on a public road and the registration of any such Massachusetts-registered motor vehicle shall be suspended in accordance with 540 CMR 4.00.

(15) Challenge Inspections.

(a) A motorist may challenge the results of an emissions inspection or reinspection. To challenge the results of an emissions inspection or reinspection, a motorist shall notify the Registry, in a form and manner as specified by the Registry, within two days (excluding Sundays, Commonwealth and federal holidays) of the inspection being challenged, and shall submit his or her vehicle for another emissions inspection or other facility as at an inspection station or other facility as designated by the Registry or the Department.

(b) If the vehicle fails a challenge inspection or reinspection, the motorist shall pay the inspection station or other facility for the cost of the inspection. If the vehicle passes the challenge inspection, the inspector shall issue the appropriate inspection certificate and report but shall not charge any inspection fee to the motorist.

(16) Waivers Prior to October 1, 2008.

(a) A motorist may apply for a waiver of emission inspection standards if the following conditions are met:

1. the vehicle failed a reinspection; and
2. emissions-related repairs were performed on the vehicle by a registered repair technician.

(b) The motorist shall present the vehicle to a location designated by the Registry or the Department along with the following documentation when applying for a waiver:

1. the vehicle's most recent reinspection report;
2. a repair form completed and signed by a registered repair technician, if the registered repair technician did not previously supply the information in a manner specified by the Department;
3. receipts for all emissions-related repairs completed by a registered repair technician since the vehicle's most recent initial inspection; and
4. any other documents required by the Department.

(c) An emissions waiver certificate shall be granted if all of the following requirements are met:

1. the emission control system is present and there is no evidence of tampering;
2. for transient loaded mode and two speed idle emissions tests, emissions levels are less than three times the standard for each pollutant tested;
3. for transient loaded mode and two speed idle emissions tests, the vehicle's emissions continue to meet standards for pollutants that met the standards at the most recent initial inspection;
4. the malfunction indicator light is not commanded on by the OBD system for any diagnostic trouble code(s) for misfire or catalytic converter efficiency;
5. repairs were performed that were appropriate for the type of emissions inspection failure(s) that occurred and resulted in improvements in emissions levels for transient loaded mode and two speed idle emissions tests, or were appropriate for the diagnostic trouble code(s) that caused the malfunction indicator light to be commanded on by the OBD system;
6. the motorist has used all relevant manufacturer warranty coverage including recalls to repair the vehicle;
7. repair expenditures exceed the following limits:
  - a. \$400 for vehicles up to but not exceeding five model years old;
  - b. \$300 for vehicles over five but not exceeding ten model years old;
  - c. \$200 for vehicles over ten model years old.

60.02: continued

8. all safety requirements are met.
- (d) Costs associated with the following repairs are not eligible for consideration toward the waiver cost limit:
1. tampering-related repairs to the emissions control system except where it can be verified that the part in question or one similar to it is no longer available for sale;
  2. repairs to an emissions control system which has been dismantled or rendered inoperable except where it can be verified that the part in question or one similar to it is no longer available for sale;
  3. repairs to an OBD system that will not communicate with emission inspection equipment;
  4. repairs to an OBD system to meet minimum test criteria for readiness;
  5. repairs under any warranty;
  6. repairs that are subject to a manufacturer's recall;
  7. repairs unrelated to emissions performance or inappropriate for the type of emission inspection failure that occurred for transient loaded mode and two speed idle emissions tests, or unrelated to the diagnostic trouble code(s) that caused the malfunction indicator light to be commanded on by the OBD system;
  8. repairs performed prior to the most recent initial inspection failure; and
  9. repairs not performed by a registered repair technician.
- (e) An emissions waiver certificate is valid until the vehicle's next emissions inspection.
- (f) An emissions waiver certificate is not transferable upon the sale of the vehicle or transfer of the vehicle's registration.
- (g) Diesel vehicles with a GVWR greater than 10,000 pounds are not eligible for a waiver from opacity standards.
- (17) Waivers Effective Beginning October 1, 2008.
- (a) A motorist may apply for a waiver of emission inspection standards if the following conditions are met:
1. the vehicle failed a reinspection; and
  2. emissions-related repairs appropriate for the diagnostic trouble code(s) that caused the malfunction indicator light to be commanded on by the OBD system were performed on the vehicle by a registered repair technician.
- (b) The motorist shall present the vehicle to a location designated by the Registry or the Department along with the following documentation when applying for a waiver:
1. receipts for all emissions-related repairs completed by a registered repair technician since the vehicle's most recent initial inspection indicating the problem(s) diagnosed and the problem(s) to which the repairs are applicable; and
  2. any other documents required by the Department.
- (c) An emissions waiver certificate shall be granted if all of the following requirements are met:
1. all safety inspection requirements are met;
  2. the vehicle is registered with the Registry as a private passenger motor vehicle or auto home pursuant to 540 CMR 2.05;
  3. the emission control system is present and there is no evidence of tampering;
  4. the malfunction indicator light is not commanded on by the OBD system for any diagnostic trouble code(s) for misfire, catalytic converter efficiency, particulate filter efficiency, or for equipment related to energy storage in a hybrid vehicle;
  5. the malfunction indicator light is functioning properly;
  6. repairs were performed that were appropriate for the diagnostic trouble code(s) that caused the malfunction indicator light to be commanded on by the OBD system;
  7. the motorist has used all relevant manufacturer warranty coverage including recalls to repair the vehicle;

60.02: continued

8. repair expenditures exceed the following limits:
  - a. \$750 for vehicles five model years old or newer;
  - b. \$650 for vehicles over five but not exceeding ten model years old; and
  - c. \$550 for vehicles over ten model years old.

Beginning January 1, 2010, the expenditure limits in 310 CMR 60.02(17)(c) shall be subject to automatic annual adjustment. On January 1, 2010, the expenditure limit in 310 CMR 60.02(17)(c)8.a. shall be adjusted by the percentage, if any, by which the Consumer Price Index (“CPI”) for the preceding calendar year differs from the CPI of 1989 and the adjusted expenditure limit shall be rounded to the nearest \$5.00.<sup>3</sup> The expenditure limit in 310 CMR 60.02(17)(c)8.b. shall then be adjusted by subtracting \$100 from the adjusted expenditure limit in 310 CMR 60.02(17)(c)8.a. The expenditure limit in 310 CMR 60.02(17)(c)8.c. shall then be adjusted by subtracting \$200 from the adjusted expenditure limit in 310 CMR 60.02(17)(c)8.a. The Department will publish these adjusted expenditure limits on the web site for the Enhanced Emissions and Safety Test Program.

- (d) Costs associated with the following repairs are not eligible for consideration toward the waiver cost limit:
  1. tampering-related repairs to the emissions control system except where it can be verified that the part in question or one similar to it is no longer available for sale;
  2. repairs to an emissions control system which has been dismantled or rendered inoperable, except where it can be verified that the part in question or one similar to it is no longer available for sale;
  3. repairs to a vehicle to correct an engine switch that does not meet the requirements of 310 CMR 60.02(13)(d);
  4. repairs to an OBD system to correct its failure to communicate with emission inspection equipment;
  5. repairs to an OBD system to return the malfunction indicator light to proper operation;
  6. repairs to an OBD system to meet minimum test criteria for readiness, except that if it was necessary to replace the vehicle’s powertrain control module to meet minimum test criteria for readiness and the vehicle failed upon reinspection because the malfunction indicator light was commanded by the OBD system to be illuminated, then one-half of the cost for such replacement may be combined with the repairs appropriate for the diagnostic trouble code(s) that caused the malfunction indicator light to be commanded on by the OBD system to meet the applicable waiver cost limit;
  7. repairs under any warranty;
  8. repairs that are subject to a manufacturer’s recall;
  9. repairs unrelated to emissions performance or inappropriate for the diagnostic trouble code(s) that caused the malfunction indicator light to be commanded on by the OBD system;
  10. repairs performed prior to the most recent initial inspection failure; and
  11. repairs not performed by a registered repair technician, except where the Department has determined that specialty repairs not typically performed by a registered repair technician are necessary.
- (e) An emissions waiver certificate is valid until the vehicle’s next emissions inspection.
- (f) An emissions waiver certificate is not transferable upon the sale of the vehicle or transfer of the vehicle’s registration.
- (g) Diesel vehicles with a GVWR greater than 10,000 pounds are not eligible for a waiver from opacity standards.

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<sup>3</sup>

The CPI for any calendar year is the average of the CPI for all-urban consumers published by the Department of Labor, as of the close of the 12 month period ending August 31<sup>st</sup> of each calendar year, as prescribed by 40 C.F.R. § 51.360(a)(7)(i). The revision of the CPI that is most consistent with the CPI for calendar year 1989 shall be used, as prescribed by 40 C.F.R. § 51.360(a)(7)(ii).

60.02: continued

(18) Diagnostic Waivers Prior to October 1, 2008.

- (a) A motorist may apply for a waiver of emissions standards for transient loaded mode and two speed idle emissions tests based on the non-repairability of a vehicle if the following conditions are met:
1. the vehicle failed a reinspection; and
  2. a registered repair technician performed all emission-related repairs possible.
- (b) The Registry or its designee shall:
1. examine the vehicle to verify that the emissions-related repairs performed were appropriate for the particular emissions failure(s) that occurred;
  2. ensure that the emission control system is present and there is no evidence of tampering;
  3. ensure that sufficient emissions-related repairs were performed on the vehicle by a registered repair technician.
  4. ensure that a repair form was completed and signed by a registered repair technician;
  5. ensure that the vehicle passes all physical and functional checks of its emissions control systems;
  6. determine that no additional repairs can be made that will reduce emission levels;
  7. ensure that repairs performed since the most recent initial inspection did not cause an overall increase in the vehicle's emissions; and
  8. ensure that all safety requirements are met.
- (c) If the conditions of 310 CMR 60.02(18)(a) and (b) are met, a diagnostic waiver certificate shall be issued to the vehicle exempting it from compliance with the emissions test standards that the vehicle failed to meet.
- (d) A diagnostic waiver is valid until the vehicle's next emissions inspection.
- (e) A diagnostic waiver is not transferable upon the sale of the vehicle or transfer of the vehicle's registration.

(19) Economic Hardship Failure Repair Extensions Effective Beginning October 1, 2008.

- (a) A motorist may apply for an economic hardship failure repair extension if the following conditions are met:
1. the vehicle failed its most recent reinspection;
  2. the vehicle does not qualify for a waiver pursuant to 310 CMR 60.02(17);
  3. the economic hardship failure repair extension is not for any emissions inspection or reinspection required by 310 CMR 60.02(5)(c) associated with initial registration in Massachusetts or by 310 CMR 60.02(5)(d) associated with a transfer of ownership;
  4. documentation of the malfunction(s) causing the economic hardship failure(s) and an estimate of related repairs is provided by a registered repair technician;
  5. each diagnostic trouble code recorded during the most recent reinspection qualifies as an economic hardship failure.
  6. the motorist has used all relevant warranty coverage including recalls to repair the vehicle.
- (b) The motorist shall present the vehicle to a location designated by the Registry or the Department along with the following documentation when applying for an economic hardship repair extension:
1. an estimate provided by a registered repair technician of the cost of repairs related to the emissions failure;
  2. the vehicle's current registration; and
  3. any other documents required by the Registry or the Department.
- (c) An economic hardship failure repair extension shall be granted after an OBD emissions inspection failure if all of the following requirements are met:
1. the cost of a single component repair or replacement to correct a diagnostic trouble code for the component is more than 1.5 times the repair expenditure limit applicable for the model year of the vehicle specified in 310 CMR 60.02(17)(c)8.a., b., or c., including any adjustment for CPI;
  2. the vehicle does not qualify for a waiver pursuant to 310 CMR 60.02(17);
  3. the economic hardship failure repair extension is not for any emissions inspection or reinspection required by 310 CMR 60.02(5)(c) associated with initial registration in Massachusetts or by 310 CMR 60.02(5)(d) associated with a transfer of ownership;

60.02: continued

4. the Department or its designee agrees with the findings of the registered repair technician regarding the cause of the economic hardship failure, that the repair estimate is related to repairs appropriate for the economic hardship failure, and that the repair estimate provided by the registered repair technician is reasonable;
  5. each diagnostic trouble code recorded during the most recent reinspection qualifies as an economic hardship failure;
  6. the motorist has used all relevant warranty coverage including recalls to repair the vehicle.
  7. all safety inspection requirements are met;
  8. the vehicle is registered with the Registry as a private passenger motor vehicle or auto home pursuant to 540 CMR 2.05;
  9. the emission control system is present and there is no evidence of tampering; and
  10. the repair estimate is related to repairs appropriate for the economic hardship failure.
- (d) An economic hardship repair extension is valid until the vehicle's next emissions inspection.
- (e) A vehicle granted an economic hardship failure repair extension may not be issued a waiver or an economic hardship failure repair extension in *lieu* of passing its next emissions inspection or reinspection.

(20) Inspector Training and Certification.

- (a) No person shall perform an emissions inspection unless such persons are certified by the Department or its designee and licensed by the Registry.
- (b) To become an inspector a person shall receive Department-approved training, be certified by the Department, and licensed by the Registry to perform inspections.
- (c) To meet the certification requirement, a person shall:
  1. pass the Department-approved exam;
  2. demonstrate to the satisfaction of the Department or its designee, the ability to conduct a proper inspection, and perform proper quality control and workstation maintenance procedures; and
  3. not have a pattern of noncompliance with respect to performing motor vehicle inspections.
- (d) Certification. The Department shall certify a person who meets the requirements at 310 CMR 60.02(20)(c).
- (e) The Department may require inspectors to obtain additional training and pass additional exams prior to renewing their certifications if the Department determines that such training and examinations are appropriate to accommodate changes in the test equipment, changes in test procedures, or other changes in the motor vehicle inspection and maintenance program. The Department shall make any such determination in writing. An emissions inspector certificate shall renew automatically upon renewal of the emissions inspector license unless the Department makes such determination prior to the inspector's license renewal.

(21) Repair Technician Registration Prior to October 1, 2008.

- (a) To become a registered repair technician an applicant shall complete the Department-approved repair technician training module and meet at least one of the following requirements:
  1. be ASE L-1 certified; or
  2. have passed the Department-approved assessment test demonstrating that his or her abilities are equivalent to, or better than, ASE L-1 certification and obtain ASE L-1 certification within 18 months of passing the assessment test; or
  3. have successfully completed the Department-approved repair technician training course and obtain ASE L-1 certification within 18 months of passing the last module in the training course.
- (b) To become a registered repair technician, specializing in the repair of diesel vehicles, an applicant must complete the Department-approved repair technician training module and meet at least one of the following requirements:
  1. be ASE L-2 certified or have equivalent certification from an engine manufacturer;
  - or

60.02: continued

2. have passed the Department-approved assessment test demonstrating that his or her abilities are equivalent to, or better than ASE L-2 certification and obtain ASE L-2 certification within 36 months of passing the assessment test; or
3. obtain ASE L-2 certification within 36 months of passing the training course.

(22) Repair Technician Registration Effective Beginning October 1, 2008.

- (a) To become a registered repair technician, an applicant shall complete any Department-required repair technician training, and meet at least one of the following requirements:
  1. be ASE L-1 certified;
  2. have equivalent certification from a motor vehicle or engine manufacturer, as determined by the Department or its designee (registered repair technicians qualifying under 310 CMR 60.02(22) would be registered repair technicians only for the motor vehicle or engine manufacturer's vehicles to which the equivalent certification applies), and be employed by a dealership for that manufacturer or by a repair facility recognized or authorized by the engine manufacturer; or
  3. have equivalent certification from another certification organization, as determined by the Department or its designee.
- (b) To become a registered repair technician, specializing in the repair of diesel vehicles, an applicant shall complete the Department-approved repair technician training module and meet at least one of the following requirements:
  1. be ASE L-2 certified; or
  2. have equivalent certification from a motor vehicle or engine manufacturer, as determined by the Department or its designee (registered repair technicians qualifying under 310 CMR 60.02(22) would be registered repair technicians only for the motor vehicle or engine manufacturer's vehicles to which the equivalent certification applies), and be employed by a dealership for that manufacturer or by a repair facility recognized or authorized by the engine manufacturer; or
  3. have equivalent certification from another certification organization, as determined by the Department or its designee.
- (c) The Department may remove a registered repair technician's registration if:
  1. any requirement for qualification as a registered repairer is not met or maintained;
  2. the registered repair technician provides false documentation to the Department or its designee, the Registry, or a motorist, of repairs performed on a vehicle;
  3. the registered repair technician provides false documentation to the Department or its designee, the Registry, or the motorist, of the cost of repairs performed on a vehicle; or
  4. the Department, the Registry, or any state or federal agency or court of competent jurisdiction determines that the registered repairer has performed or been a party to fraudulent or deceptive business practices, including, but not limited to: charging motorists for repairs not performed; or, recommending or performing repairs unrelated to the cause of an emissions inspection failure and representing those repairs as related to the cause of an emissions inspection failure, or has violated any laws, rules, regulations, or other requirements or orders related to the protection of the environment.
- (d) Any automotive repair facility listed by the Department as employing a registered repair technician may be removed from the Department's list of such automotive repair facilities if:
  1. the listed automotive repair facility no longer employs a registered repair technician;
  2. the listed automotive repair facility provides false documentation to the Department or its designee, the Registry, or a motorist of repairs performed on a vehicle;
  3. the listed automotive repair facility provides false documentation to the Department or its designee, the Registry, or the motorist of the cost of repairs performed on a vehicle; or
  4. the Department, the Registry, or any state or federal agency or court of competent jurisdiction determines that any owner, operator, or employee of the listed automotive repair facility, while in the exercise of his or her responsibilities or duties related to the automotive repair facility, has performed or been a party to fraudulent or deceptive business practices, including, but not limited to, charging motorists for repairs not performed, recommending or performing repairs unrelated to the cause of an emissions inspection failure and representing those repairs as related to the cause of an emissions inspection failure, or has violated any laws, rules, regulations, or other requirements or orders related to the protection of the environment.

60.02: continued

(23) Prohibition Against Tampering. All persons are prohibited from tampering with any vehicle emissions control device or system. No person or entity shall take any action or fail to take any action that causes a motor vehicle to no longer comply with federal or state law, with standards for the motor vehicle emissions inspection, or with requirements for motor vehicle registration. 310 CMR 60.02(23) shall not be construed as preventing the temporary alteration of equipment for the purpose of motor vehicle repair or quality assurance by the Department, Registry, or their designees.

(24) Enforcement.

- (a) No motorist may operate any vehicle without a valid inspection certificate.
- (b) No motorist may operate any motor vehicle in violation of 310 CMR 60.02.
- (c) Registration Suspension. A motor vehicle which does not comply with the applicable emissions inspection requirements shall be subject to registration suspension pursuant to 540 CMR 4.00 until the vehicle passes the applicable emissions inspection or obtains a waiver.
- (d) No person shall give false information to an inspection station, an inspector, the Registry, or the Department or its designee concerning any repairs or associated expenditures to be considered for determining eligibility for a waiver or economic hardship repair extension waiver.
- (e) Inspection Certificates.
  - 1. No person shall issue an inspection certificate indicating compliance with 310 CMR 60.02 for a motor vehicle that has not been inspected or reinspected in accordance with, or is not in compliance with, the standards for the applicable motor vehicle emissions inspection pursuant to 310 CMR 60.02.
  - 2. An inspector shall issue an inspection certificate indicating compliance only for a motor vehicle that he or she has inspected and determined to comply with the applicable standards for motor vehicle emissions inspections pursuant to 310 CMR 60.02.
  - 3. An inspector shall issue a certificate indicating failure of the emissions inspection to any motor vehicle that he or she has inspected and determined does not comply with the applicable standards for motor vehicle emissions inspection pursuant to 310 CMR 60.02.
  - 4. No person or entity may alter, falsify, or counterfeit an inspection certificate, waiver certificate, or diagnostic waiver certificate.
  - 5. No person shall affix an inspection certificate, waiver certificate, or diagnostic waiver certificate to a motor vehicle other than the motor vehicle for which the certificate was issued.
- (f) Penalty Provisions.
  - 1. The Department may impose a penalty against an inspection station for any violation of 310 CMR 60.02 at that inspection station. The Department may impose a penalty against any person for any violation of 310 CMR 60.02.
  - 2. Any person who violates any provision of M.G.L. c. 111, § 142M or 310 CMR 60.02 shall be subject to a civil or administrative penalty or fine or imprisonment pursuant to M.G.L. c. 111, § 142M and M.G.L. c. 21A, § 16.
  - 3. Each day or portion thereof on which a violation occurs or continues shall be deemed a separate violation.
  - 4. Whenever the Department seeks to assess a civil administrative penalty pursuant to M.G.L. c. 21A, § 16, M.G.L. c. 111, § 142M and 310 CMR 60.02, the person who would be assessed the penalty shall have the right to an adjudicatory hearing. Any request for an adjudicatory hearing thereon shall be made in accordance with M.G.L. c. 21A, § 16, and 310 CMR 5.00.

60.03: U Conformity to the State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

(1) Purpose. The purpose of 310 CMR 60.00 is to implement §176(c) of the Clean Air Act, as amended 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 U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of funds under 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). 310 CMR 60.00 sets forth policy, criteria and procedures for demonstrating and assuring conformity of such activities to the Massachusetts State Implementation Plan developed pursuant to § 110 and Part D of the Clean Air Act.

(2) Definitions. Terms but not defined in 310 CMR 60.03 shall have the meaning given to them by the CAA, titles 23 and 49 U.S.C., Environmental Protection Agency regulations or U.S. Department of Transportation regulations, in that order of priority.

CAA means the Clean Air Act, as amended (42 U.S.C 7401 *et seq.* as amended by PL 101-549, November 15, 1990).

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

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

CMAQ means the congestion mitigation and air quality improvement program established under the Intermodal Surface Transportation and Efficiency Act of 1991.

Consultation means that one party confers with another identified party, provides all appropriate information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds to those views in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action.

Control strategy SIP revision is the revision to the SIP which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), 189(b)(1)(A) and 192(a)&(b) for nitrogen dioxide (NO<sub>2</sub>)).

Control strategy period with respect to carbon monoxide (CO), particulate matter less than ten microns in diameter (PM<sub>10</sub>), nitrogen dioxide and/or ozone precursors (volatile organic compounds and oxides of nitrogen), means that period of time after EPA approves control strategy SIP containing strategies for controlling CO, and/or ozone, as appropriate. This period ends when a request under § 107(d) of the CAA for redesignation to an attainment area is submitted to and approved by EPA.

Department means the Department of Environmental Protection.

Design concept means the type of facility identified by a 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 a 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.

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EOTC means the Massachusetts Executive Office of Transportation and Construction.

EPA means the United States Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

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

FTA means the Federal Transit Administration of DOT.

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

Highway project is an undertaking to implement or modify a highway facility or highway-related program and consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

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

Horizon year is a year for which the transportation plan describes the envisioned transportation system pursuant to 310 CMR 60.03(7).

Hot-spot analysis is an estimation of likely future localized CO and PM<sub>10</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors and then applying the ratio to the background value) expected in the area. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

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.

Interim Period with respect to a pollutant or pollutant precursor means that period of time lasting until the earlier of the following:

- (a) submission to EPA of the relevant control strategy SIP revisions which have been endorsed by the Governor and has been subject to a public hearing, or
- (b) the date that the Clean Air Act requires relevant control strategy SIP to be submitted to EPA, provided EPA has notified the Commonwealth, MPO, and DOT of the Commonwealth's failure to submit any such plans. The precise end of the interim period is defined in 310 CMR 60.03(24).

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

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

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

MEPA means the Massachusetts Environmental Policy Act (M.G.L. c. 30, § 61 through 62H, and regulations at 301 CMR 11.00: *MEPA Regulations*).

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the Commonwealth, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making. For the purposes of 310 CMR 60.03, Regional Planning Agencies (RPA) in the Commonwealth of Massachusetts which have not been formally designated as MPOs under 23 U.S.C. 134 and 49 U.S.C. 1607 shall be subject to the same requirements as MPOs.

Milestone means an emissions level and the date on which it is required to be achieved under § 182(g)(1) and § 189(c) of the CAA.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in a SIP revision (or in a SIP revision which was endorsed by the Governor or his or her designee, subject to a public hearing) and submitted to EPA but not yet approved by EPA for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the SIP to highway and transit vehicles. The SIP for an ozone nonattainment area shall include a NO<sub>x</sub> motor vehicle emissions budget if NO<sub>x</sub> reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the Clean Air Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM-10), and sulfur dioxide (SO<sub>2</sub>).

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

NEPA process completion 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 which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

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

Project means a highway project or transit project.

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

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Regionally significant project means a transportation project (other than an exempt project) 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. Regionally significant projects include, but are not limited to, (a) any project that adds a lane (other than a turning lane in the vicinity of an intersection) to a minor arterial or greater classification highway; and (b) any project for the construction of a new facility that is a minor arterial or greater classification highway.

SIP is the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under § 110, or promulgated under § 110(c), or promulgated under § 301(d) and which implements the relevant requirements of the CAA.

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

Transitional period with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy SIP which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The transitional period lasts until EPA takes final approval action on the control strategy SIP submission.

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

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.

(3) Applicability.

(a) Action applicability.

1. Except as provided for in 310 CMR 60.03(3)(c) or 310 CMR 60.03(30), conformity determinations are required for:

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- a. The adoption, acceptance, approval, funding or support of transportation plans by an MPO or DOT;
  - b. The adoption, acceptance, approval, funding or support of TIPs by an MPO or DOT; and
  - c. The approval, funding, or implementation of FHWA/FTA projects.
2. Conformity determinations are not required for projects which are not FHWA/FTA projects. However, 310 CMR 60.03(25) applies for regionally significant non FHWA/FTA projects.
- (b) Geographic Applicability.
1. The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants.
  2. The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>) and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>).
  3. The provisions of this subpart apply with respect to emissions of the following precursor pollutants:
    - a. volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in ozone areas (unless the EPA Administrator determines under §182 of the CAA that additional reductions would not contribute to attainment);
    - b. NO<sub>x</sub> in NO<sub>2</sub> areas; and
    - c. VOC, NO<sub>x</sub> and PM<sub>10</sub> in PM<sub>10</sub> areas if:
      - i. During the interim period, 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 PM<sub>10</sub> nonattainment problem and has so notified the MPOs and DOT; or
      - ii. During the transitional, control strategy and maintenance periods, the applicable implementation plan (or implementation plan submission) established a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.
- (c) Limitations.
1. Projects subject to 310 CMR 60.00 for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the most recent three year period: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.
  2. A new conformity determination for a project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the most recent three year period.
- (4) Priority. When assisting, funding or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of the transportation-related portions of the SIP. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.
- (5) Frequency of conformity determinations.
- (a) Conformity determinations and conformity redeterminations for transportation plans, TIPs and FHWA/FTA projects must be made according to the requirements of 310 CMR 60.05 and the SIP.
  - (b) Transportation plans.
    1. Each new transportation plan shall be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

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2. All transportation plan revisions shall 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 310 CMR 60.03(30). The conformity determination shall be based on the transportation plan and the revision taken as a whole.
  3. Conformity of existing transportation plans shall be redetermined within 18 months of the following, or the existing conformity determination will lapse:
    - a. November 24, 1993; (May 24, 1995)
    - b. EPA approval of a SIP revision which:
      - i. Establishes or revises a transportation-related emissions budget (as required by CAA sections 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B) and 189(b)(1)(A).
      - ii. Adds, deletes, or changes TCMs.
    - c. EPA promulgation of a SIP which establishes or revises a transportation-related emissions budget, or adds, deletes or changes TCMs.
  4. Conformity determinations shall be made no less frequently than every three years and shall lapse within three years of a determination.
- (c) Transportation improvement programs.
1. A new TIP shall be found to conform before the TIP is approved by the MPO or accepted by DOT.
  2. 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 310 CMR 60.03(30).
  3. After an MPO adopts a new or revised transportation plan, conformity shall be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in 310 CMR 60.03(30). Otherwise, the existing conformity determination for the TIP will lapse.
  4. Conformity determinations shall be made no less frequently than every three years and shall lapse within three years of a determination.
- (d) Projects. FHWA/FTA projects shall be found to conform before they are adopted, accepted, approved, or funded. Conformity shall be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.
- (6) Consultation.
- (a) Agency Responsibilities.
1. Executive Office of Transportation and Construction (EOTC)
    - a. coordinates overall consultation process for conformity findings of transportation plans and TIPs;
    - b. provides guidance and assistance to MPOs in determining conformity of transportation plans, TIPs and projects, as appropriate;
    - c. reviews MPO transportation plans, TIPs and project air quality conformity determinations for acceptability and content and coordinates submittal to the Department, EPA and DOT;
    - d. performs project-level conformity determinations during the environmental review process under NEPA and MEPA;
    - e. provides the Department with traffic-related parameters for calculating mobile source emissions of the SIP;
    - f. serves as the lead agency, in consultation with other MPO members, in SIP planning and implementation for transportation initiatives pursuant to section 174(a) of the Clean Air Act.
  2. Metropolitan Planning Organizations (MPOs)
    - a. develops transportation plans and TIPs;
    - b. performs regional emissions analysis of transportation plans and TIPs;
    - c. makes conformity findings on transportation plans and TIPs;
    - d. develops public consultation procedures in accordance with 23 CFR Part 450;

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3. Department of Environmental Protection (DEP)
    - a. serves as lead agency in overall SIP development, coordination and implementation;
    - b. coordinates overall consultation process for the SIP;
    - c. coordinates with EPA on SIP-related issues;
    - d. provides EOTC and the MPOs with mobile source inputs for air quality modeling of transportation plans, TIPs and projects;
    - e. conducts conformity reviews of transportation plans, TIPs and projects and issues findings of concurrence or non-concurrence.
  4. Environmental Protection Agency (EPA)
    - a. provides input and guidance, as needed, on analysis procedures for air quality estimates, SIP preparation, conformity analyses and interpretation of EPA rules and guidance;
    - b. consults with the U.S. DOT on review of conformity determinations.
  4. U.S. Department of Transportation (DOT)
    - a. provides input and guidance, as needed, on the transportation planning process and issues that arise during the conformity process;
    - b. makes final conformity findings;
    - c. sends copies of conformity determinations to EPA for input.
- (b) The MPO shall make conformity determinations according to 310 CMR 60.03(6) and with the SIP and in accordance with the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods.
- (c) State and Federal Agency Consultation.
1. Prior to such time that conformity analyses on transportation plans, TIPs and projects are performed, or at the request of an involved agency, EOTC shall convene a consultation meeting(s) with representatives from the MPOs, the Department, EPA and DOT. Prior to a consultation meeting(s), EOTC shall circulate a meeting agenda to the involved agencies. The specific purposes of the state and federal agency consultation meeting are to:
    - a. select CO and PM<sub>10</sub> hotspot modeling procedures;
    - b. select regional emissions analysis models including consulting on model development and assessing project design factors for modeling;
    - c. identify analysis methods to estimate vehicle miles travelled (VMT) and emissions from non-regionally significant projects as required by 310 CMR 60.03(26)(b).
    - d. select inputs to the most recent EPA-approved emissions factor model;
    - e. identify regionally significant projects to be included in the regional emissions analysis including non-federally funded projects;
    - f. identify projects which have changed in design and scope from the transportation plan or TIP;
    - g. identify exempt projects;
    - h. identify exempt projects and categories of exempt projects which should be treated as non-exempt because they may have adverse air quality impacts and determining appropriate air quality analysis methodologies for analyzing such projects;
    - i. identify transportation plan and TIP revisions which add or delete exempt projects;
    - j. identify the latest planning assumptions and determining consistency with SIP assumptions;
    - k. determine if the transportation plan and TIP are fiscally constrained; and
    - l. develop factors to reconcile Highway Performance Monitoring System (HPMS) VMT estimates with network-based model VMT estimates pursuant to 310 CMR 60.03(25)(b)2.
  2. EOTC shall document the outcome(s) of the consultation meeting(s) and shall circulate said documentation to the MPOs, the Department, EPA and DOT.

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(d) State Agency Consultation.

1. Prior to such time that conformity analyses on transportation plans, TIPs and projects are performed, or at the request of an involved agency, EOTC shall convene a consultation meeting(s) with representatives from the MPOs and the Department. EOTC shall circulate a meeting agenda to involved agencies. The specific purpose of the state agency consultation meeting are to:

- a. identify which events trigger conformity in addition to events listed in 310 CMR 60.03(6);
- b. consult on emissions analyses for transportation activities which cross the borders of MPO or nonattainment areas; and
- c. consult on conformity determinations outside MPO and nonattainment or maintenance areas.

2. EOTC shall document the outcome(s) of the consultation meeting(s) and shall circulate said documentation to the MPOs and the Department.

(e) CMAQ Consultation.

1. Prior to the time that the MPOs perform required conformity analyses on transportation plans, TIPs and projects, EOTC shall convene a consultation meeting(s) with representatives from the MPOs and the Department for the purpose of:

- a. determining and establishing criteria and procedures for projects to be selected under the CMAQ program. Criteria to select projects shall include, but shall not be limited to, whether or not the project is a TCM in the SIP or listed as TCM under § 108(f) of the CAA, quantity of potential emissions reductions, timing of air quality benefits, impact on multiple pollutants, potential to reduce VMT, potential to alleviate congestion, the intermodal aspects of the projects, cost effectiveness, regional applicability, public awareness, promotion of technology, educational value, innovation and potential to reduce emissions from heavy duty vehicles; and
- b. determining air quality analysis procedures for CMAQ projects.

2. Prior to performing the required conformity analyses on transportation plans, TIPs and projects, the MPOs shall:

- a. develop a list of potential projects to be funded under the CMAQ program;
- b. convene a consultation meeting which includes representatives from the MPO and the Department for the purpose of selecting CMAQ projects using the criteria developed pursuant to 310 CMR 60.03(6)(d)1.a.

(f) Transportation Control Measures.

1. Prior to making conformity determinations for a transportation plan, TIP or project, the MPOs and EOTC shall submit a list and status report of SIP TCMs, including TCMs contained in the SIP prior to passage of the Clean Air Act Amendments of 1990, to the Department for review and approval.

2. In the event that a SIP TCM has not been implemented or is behind the schedule required by the SIP, the MPO and/or EOTC shall submit to the Department, in writing:

- a. the reasons why the SIP TCM has not been implemented or has been delayed;
- b. the steps being taken to get the SIP TCM on schedule;
- c. the funding source to be used to fund and implement the SIP TCM; and
- d. an assessment of whether the SIP TCM may need to be replaced with substitute SIP TCM and SIP revision in order to create the expected emissions reductions.

(g) Concurrence.

1. After a final conformity determination has been made by an MPO, EOTC and the MPOs shall submit MPO-endorsed transportation plans, TIPs or projects within 30 days of endorsement to the Department for concurrence with the conformity determination.

2. The Department shall review the conformity determinations of transportation plans, TIPs or projects and shall issue a finding of concurrence or non-concurrence with the conformity determination, in writing, within 30 days. If the Department has not issued a finding of concurrence or non-concurrence within 30 days, the transportation plan, TIP or project shall be presumed to conform to the SIP by the Department.

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3. If the Department issues a finding of non-concurrence with the conformity determination, EOTC and the MPO shall have 30 days to resolve any issues which resulted in the finding of non-concurrence. If the issues which resulted in the finding of non-concurrence are not resolved to the Department's satisfaction, the state air agency shall issue a finding, in writing, of non-conformance with the SIP to EPA and DOT for further action.
- (h) Public consultation procedures. Prior to making conformity determinations on transportation plans, TIPs and projects, EOTC and MPOs shall comply with the public review processes required under 23 CFR Part 450 planning regulations and provide an opportunity for public review and comment. All public comments regarding plans for regionally significant projects not receiving FHWA or FTA funding or approval which were not reflected in the emissions analysis shall be specifically addressed in writing.
  - (i) Circulation of documents.
    1. Draft Transportation Plans, TIPs and projects shall be circulated to the Department, EPA, FHWA and FTA and shall be available for public review by each MPO at each Regional Planning Agency.
    2. Transportation Plans, TIPs and projects which have received a final conformity determination by an MPO and have been approved by DOT shall be circulated to the Department, EPA, FHWA and FTA and shall be available for public review by each MPO at each Regional Planning Agency.
- (7) Content of Transportation Plans.
    - (a) Transportation plans adopted after January 1, 1995 shall specifically describe the transportation system envisioned for certain horizon years.
      1. The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:
        - a. Horizon years shall be no more than ten years apart.
        - b. The first horizon year shall be no more than ten years from the base year used to validate the transportation demand planning model.
        - c. If the attainment year is in the time span of the transportation plan, the attainment year shall be a horizon year.
        - d. The last horizon year shall be the last year of the transportation plan's forecast period.
      2. For these horizon years:
        - a. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with the SIP and consultation procedures in 310 CMR 60.03(6);
        - b. 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 effects 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 sufficient to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and
        - c. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.
    - (b) Savings The requirements of 310 CMR 60.03 supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

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(8) Relationship of Transportation Plan and TIP Conformity with the NEPA and MEPA Processes. 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, the MEPA process or other project development studies. Should the NEPA process or MEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project shall meet the criteria in 310 CMR 60.03(11) through (23) for projects not from a TIP before NEPA process or MEPA completion.

(9) Fiscal Constraints for Transportation Plans and TIP. Transportation plans and TIPs shall be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450.322(b)(11) and 450.324(e) as in effect on the date of adoption of this rule in order to be found in conformity. The determinations that a transportation plan or TIP is fiscally constrained shall be subject to the consultation procedures in 310 CMR 60.03(6).

(10) Criteria and Procedures for Determining Conformity of Transportation Plans, Programs and Projects: General

(a) In order to be found to conform, each transportation plan, program and FHWA/FTA project shall satisfy the applicable criteria and procedures in 310 CMR 60.03(11) through (23) as listed in 310 CMR 60.03(10)(b)Table 1 and shall comply with all applicable conformity requirements of the SIP and of court orders for the area which pertain specifically to the conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs and FHWA/FTA projects), the time period which the determination is made and the relevant pollutant.

(b) The following table indicates the criteria and procedures in 310 CMR 60.03(11) through (23) which shall apply for each action in each time period.

Table 1. - Conformity Criteria

ALL PERIODS	
Transportation Plan	<ul style="list-style-type: none"> <li>• latest planning assumptions 310 CMR 60.03(11)</li> <li>• latest emissions model 310 CMR 60.03(12)</li> <li>• conformity in accordance with consultation procedures 310 CMR 60.03(6)</li> <li>• timely implementation of TCMs 310 CMR 60.03(13)(b)</li> </ul>
TIP	<ul style="list-style-type: none"> <li>• latest planning assumptions 310 CMR 60.03(11)</li> <li>• latest emissions model 310 CMR 60.03(12)</li> <li>• conformity in accordance with consultation procedures 310 CMR 60.03(6)</li> <li>• timely implementation of TCMs 310 CMR 60.03(13)(c)</li> </ul>
Project (from a conforming plan and TIP)	<ul style="list-style-type: none"> <li>• latest planning assumptions 310 CMR 60.03(11)</li> <li>• latest emissions model 310 CMR 60.03(12)</li> <li>• conformity in accordance with consultation procedures 310 CMR 60.03(6)</li> <li>• currently conforming plan/TIP 310 CMR 60.03(14)</li> <li>• project from conforming plan/TIP 310 CMR 60.03(15)</li> <li>• no causing/contributing to/increasing severity of CO or PM<sub>10</sub> violations in nonattainment and maintenance areas 310 CMR 60.03(16)</li> </ul>
Project (not from a conforming plan and TIP)	<ul style="list-style-type: none"> <li>• latest planning assumptions 310 CMR 60.03(11)</li> <li>• latest emissions model 310 CMR 60.03(12)</li> <li>• conformity in accordance with consultation 310 CMR 60.03(6)</li> <li>• timely implementation of TCMs 310 CMR 60.03(13)(d)</li> <li>• currently conforming plan/TIP 310 CMR 60.03(14)</li> <li>• no causing/contributing to/increasing severity of CO or PM<sub>10</sub> violations in nonattainment and maintenance areas 310 CMR 60.03(16)</li> <li>• FHWA/FTA projects shall comply with PM<sub>10</sub> control measures in the SIP 310 CMR 60.03(33)</li> </ul>

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Table 1. - Conformity Criteria (continued)

INTERIM PERIOD (period between 12/27/93 and SIP submittal or SIP deadline)	
Transportation Plan	<ul style="list-style-type: none"> <li>• contribute to reductions in ozone and CO nonattainment areas 310 CMR 60.03(21)</li> <li>• contribute to reductions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas 310 CMR 60.03(34)</li> </ul>
TIP	<ul style="list-style-type: none"> <li>• contribute to reductions in ozone and CO nonattainment areas 310 CMR 60.03(22)</li> <li>• contribute to reductions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas 310 CMR 60.03(35)</li> </ul>
Project (from a conforming plan and TIP)	<ul style="list-style-type: none"> <li>• FHWA/FTA project must eliminate/reduce severity and number of CO violations in CO nonattainment areas 310 CMR 60.03(20)</li> </ul>
Project (not from a conforming plan and TIP)	<ul style="list-style-type: none"> <li>• FHWA/FTA project must eliminate/reduce severity and number of CO violations in CO nonattainment areas 310 CMR 60.03(20)</li> <li>• contribute to reductions in ozone and CO nonattainment areas 310 CMR 60.03(23)</li> <li>• contribute to reductions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas 310 CMR 60.03(35)</li> </ul>
TRANSITIONAL PERIOD (period between SIP submittal and EPA approval of SIP)	
Transportation Plan	<ul style="list-style-type: none"> <li>• consistent with motor vehicle emissions budget 310 CMR 60.03(17)</li> <li>• contribute to reductions in ozone and CO nonattainment areas 310 CMR 60.03(21)</li> <li>• contribute to reductions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas 310 CMR 60.03(34)</li> </ul>
TIP	<ul style="list-style-type: none"> <li>• consistent with motor vehicle emissions budget 310 CMR 60.03(18)</li> <li>• contribute to reductions in ozone and CO nonattainment areas 310 CMR 60.03(22)</li> <li>• contribute to reductions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas 310 CMR 60.03(35)</li> </ul>
Project (from a conforming plan and TIP)	<ul style="list-style-type: none"> <li>• FHWA/FTA project must eliminate/reduce severity and number of CO violations in CO nonattainment areas 310 CMR 60.03(20)</li> </ul>
Project (not from a conforming plan and TIP)	<ul style="list-style-type: none"> <li>• consistent with motor vehicle emissions budget 310 CMR 60.03(19)</li> <li>• FHWA/FTA project must eliminate/reduce severity and number of CO violations in CO nonattainment areas 310 CMR 60.03(20)</li> <li>• contribute to reductions in ozone and CO nonattainment areas 310 CMR 60.03(23)</li> <li>• contribute to reductions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas 310 CMR 60.03(35)</li> </ul>
CONTROL STRATEGY AND MAINTENANCE PERIOD (period after EPA approval of SIP)	
Transportation Plan	<ul style="list-style-type: none"> <li>• consistent with motor vehicle emissions budget 310 CMR 60.03(17)</li> </ul>
TIP	<ul style="list-style-type: none"> <li>• consistent with motor vehicle emissions budget 310 CMR 60.03(18)</li> </ul>
Project (from a conforming plan and TIP)	<ul style="list-style-type: none"> <li>• no additional criteria</li> </ul>
Project (not from a conforming plan and TIP)	<ul style="list-style-type: none"> <li>• consistent with motor vehicle emissions budget 310 CMR 60.03(19)</li> </ul>

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(11) Latest Planning Assumptions.

- (a) During all periods, conformity determinations, with respect to all other applicable criteria in 310 CMR 60.03(12) through (23), shall be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination shall satisfy the requirements of 310 CMR 60.03(11)(b) through (f).
- (b) Assumptions including but not limited to VMT per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination shall also be based on the latest assumptions about current and future background concentrations. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion shall be approved by the MPO or other agency authorized to make such estimates for the area after consultation with the Department.
- (c) The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.
- (d) The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.
- (e) The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs 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 310 CMR 60.03(6).

(12) Latest Emissions Model.

- (a) During all periods, conformity determinations shall be based on the latest emission estimation model available. This requirement is satisfied if the most current version of the motor vehicle emissions model specified by EPA and used in the preparation or revision of the SIP is used for the conformity analysis and the consultation requirements in 310 CMR 60.03(6) are met.
- (b) EPA shall consult with DOT to establish a grace period following the specification of any new model.
  - 1. The grace period shall 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 shall 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 shall announce the appropriate grace period in the *Federal Register*.
- (c) Conformity analyses for which the emissions analysis was begun before the *Federal Register* notice of availability of the latest emission model or during the period which allows the use of the previous emissions model as defined in the *Federal Register* and known as the "grace period" may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the *Federal Register* notice of availability, provided no more than three years have passed since the draft environmental document was issued.

(13) Timely Implementation of TCMs.

- (a) During all periods, the transportation plan and TIP shall provide for the timely implementation of TCMs in the SIP and in SIP revisions submitted to EPA. An FHWA/FTA project which is not from a conforming plan and TIP shall provide for the timely implementation of TCMs in the SIP and in SIP revisions submitted to EPA.
- (b) For transportation plans, this criterion is satisfied if the following two conditions are met:

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1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the SIP and in SIP revisions submitted to EPA including, but not limited to those which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, and is consistent with schedules included in the SIP and in SIP revisions submitted to EPA.
  2. Nothing in the transportation plan interferes with the implementation of any TCM in the SIP and in SIP revisions submitted to EPA.
- (c) For TIPs, this criterion is satisfied if the following conditions are met:
1. An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs, including but not limited to those which are eligible for funding under title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the SIP in SIP revisions submitted to EPA, or, if such TCMs are behind the schedule established in the SIP or in SIP revisions submitted to EPA, 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 a nonattainment or maintenance area. Maximum priority to approval or funding of the TCMs shall include demonstrations with respect to funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals and similar actions.
  2. If TCMs in the SIP and in SIP revisions submitted to EPA have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the SIP and in SIP revisions submitted to EPA, 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 under ISTEA's Congestion Mitigation and Air Quality Improvement Program.
  3. Nothing in the TIP may interfere with the implementation of any TCM in the SIP and in SIP revisions submitted to EPA.
- (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 SIP and in SIP revisions submitted to EPA.

(14) Project Approval: Currently Conforming Transportation Plan and TIP. During all periods, there shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This requirement is satisfied if the current transportation plan and TIP have been found to conform to the SIP by the MPO and DOT according to the procedures and criteria of 310 CMR 60.03 and the Department has concurred with the conformity determination. 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 shall also lapse if conformity is not determined according to the frequency requirements of 310 CMR 60.03(5).

(15) Projects from a Transportation Plan and TIP.

- (a) During all periods, transportation projects shall come from a conforming transportation plan and TIP. If this criterion is not satisfied, the project shall satisfy all criteria for a project not from a conforming transportation plan and TIP referenced in 310 CMR 60.03(10)Table 1. A project is considered to be from a conforming transportation plan if it meets the requirements of 310 CMR 60.03(15)(b) and from a conforming TIP if it meets the requirements of 310 CMR 60.03(15)(c).
- (b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

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1. For projects which are required to be identified in the transportation plan in order to satisfy 310 CMR 60.03(7), the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or
  2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.
- (c) A project is considered to be from a conforming TIP if the following conditions are met:
1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and
  2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures shall be obtained from the project sponsor and/or operator as required by 310 CMR 60.03(29)(a) in order for the project to be considered to come from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.
- (16) Localized CO and PM<sub>10</sub> Violations (Hot Spots).
- (a) During all periods FHWA/FTA projects shall not cause or contribute to any new localized CO or PM<sub>10</sub> violations or increase the frequency or severity of any existing CO or PM<sub>10</sub> violations in CO or PM<sub>10</sub> nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.
  - (b) The demonstration shall be performed according to the requirements of 310 CMR 60.03(6)(c)1.a. and (27).
  - (c) For projects which are not of the type identified by 310 CMR 60.03(27)(a) or (d), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration shall be performed according to the requirements of 310 CMR 60.03(27)(b).
- (17) Motor Vehicle Emissions Budget (Transportation Plan).
- (a) In order to be found in conformity, the transportation plan shall be found consistent with the motor vehicle emissions budget(s) in the SIP or SIP package submitted to EPA through a quantitative demonstration. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in 310 CMR 60.03(31). This criterion may be satisfied if the requirements in 310 CMR 60.03(17)(b) and (c) are met:
  - (b) A regional emissions analysis shall be performed as follows:
    1. The regional analysis shall estimate emissions of the following pollutants and pollutant precursors for which the SIP or SIP package submitted to EPA establishes an emissions budget:
      - a. VOC as an ozone precursor;
      - b. NO<sub>x</sub> as an ozone precursor, unless the EPA Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment;
      - c. CO;
      - d. PM<sub>10</sub> (and its precursors VOC and/or NO<sub>x</sub>, if the SIP or SIP package submitted to EPA identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM<sub>10</sub> nonattainment problem or establishes a budget for such emissions); or
      - e. NO<sub>x</sub> (in NO<sub>2</sub> nonattainment or maintenance areas).

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2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;
  3. The emissions analysis methodology shall meet the requirements of 310 CMR 60.03(26);
  4. For areas with a transportation plan that meets the content requirements of 310 CMR 60.03(7)(a), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and
  5. For areas with a transportation plan that does not meet the content requirements of 310 CMR 60.03(7)(a), the emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis shall also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.
- (c) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in 310 CMR 60.03(17)(b)1. the emissions are less than or equal to the motor vehicle emissions budget as established in the SIP or SIP package submitted to EPA as follows:
1. If the SIP or SIP package submitted to EPA establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;
  2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the SIP or SIP package submitted to EPA for that year;
  3. For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the SIP or SIP submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year shall be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and
  4. For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.
- (18) Motor Vehicle Emissions Budget (TIP).
- (a) In order to be found in conformity, the TIP shall be found consistent with the motor vehicle emissions budget(s) in the SIP or SIP package submitted to EPA through a quantitative demonstration. This criterion applies during the transitional period and the control strategy and maintenance periods. This criterion may be satisfied if the requirements in 310 CMR 60.03(18)(b) and (c) are met:
  - (b) For areas with a conforming transportation plan that fully meets the content requirements of 310 CMR 60.03(7)(a), this criterion may be satisfied without additional regional analysis if:
    1. Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and
    2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:
      - a. The TIP contains all projects which shall be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

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- b. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
  - c. The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.
3. If the requirements in 310 CMR 60.03(18)(b)1. and 2. are not met, then:
    - a. The TIP may be modified to meet those requirements; or
    - b. The transportation plan shall be revised so that the requirements in 310 CMR 60.03(18)(b)1. and 2. are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis required except a demonstration that the TIP meets the requirements of 310 CMR 60.03(18)(b)1. and 2.
- (c) For areas with a transportation plan that does not meet the content requirements of 310 CMR 60.03(7)(a), a regional emissions analysis shall meet all of the following requirements:
1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;
  2. The analysis methodology shall meet the requirements of 310 CMR 60.03(26)(c); and
  3. The regional analysis shall satisfy the requirements of 310 CMR 60.03(17)(b)1., 5., and (c).
- (19) Motor Vehicle Emissions Budget (Project not from a Plan and TIP).
- (a) In order to be found in conformity, a project which is not from a conforming transportation plan and a conforming TIP shall be found consistent with the motor vehicle emissions budget(s) in the SIP or SIP package submitted to EPA through a quantitative demonstration. This criterion applies during the transitional period and the control strategy and maintenance periods. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the SIP or SIP package submitted to EPA.
  - (b) For areas with a conforming transportation plan that meets the content requirements of 310 CMR 60.03(7)(a):
    1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:
      - a. Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
      - b. The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
      - c. The design concept and scope of the project is not significantly different from that described in the transportation plan.
    2. If the requirements in 310 CMR 60.03(19)(b)1. are not met, a regional emissions analysis shall be performed as follows:
      - a. The analysis methodology shall meet the requirements of 310 CMR 60.03(26);
      - b. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis shall include emissions from all previously approved projects which were not from a transportation plan and TIP; and
      - c. The emissions analysis shall meet the requirements of 310 CMR 60.03(17)(b)1., 4., and (c).

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(c) For areas with a transportation plan that does not meet the content requirements of 310 CMR 60.03(7)(a), a regional emissions analysis shall be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

1. The analysis methodology meets the requirements of 310 CMR 60.03(26)(c);
2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and
3. The regional analysis satisfies the requirements of 310 CMR 60.03(17)(b)1., 5., and (c).

(20) Localized CO Violations (Hot Spots) in the Interim and Transitional Periods.

(a) Each FHWA/FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project in CO nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(b) The demonstration shall be performed according to the requirements of 310 CMR 60.03(6)(c)1.a. and (27).

(c) For projects which are not of the type identified by 310 CMR 60.03(27)(a), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration shall be performed according to the requirements of 310 CMR 60.03(27)(b).

(d) The requirements of 310 CMR 60.03(20) shall lapse upon EPA approval of the control strategy SIP revision.

(21) Reductions in Ozone and CO Areas in the Interim and Transitional Periods (Transportation Plan).

(a) A transportation plan shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in 310 CMR 60.03(21)(b) through (f).

(b) The analysis years for which emissions are to be estimated shall be no more than ten years apart. The first analysis year shall be no later than the first SIP milestone year (1995 for CO nonattainment areas and 1996 for ozone nonattainment areas). The second analysis year shall be either the attainment year for the area (1996 for moderate CO nonattainment areas and 1999 for serious ozone nonattainment areas), or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) The "Baseline" scenario for each of the analysis years is defined to be the future transportation system that would result from current programs, composed of the following (except that projects listed in 310 CMR 60.03(30) and (31) 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

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3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project shall be included in the "Action" scenario, as described in 310 CMR 60.03(21)(d).)
- (d) The "Action" scenario for each of the analysis years shall be defined as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in 310 CMR 60.03(30) and (31) 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 SIP;
  3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the SIP 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 on the transportation plan;
  4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the SIP or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;
  5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
  6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- (e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference in regional VOC and NO<sub>x</sub> emissions (unless the Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of 310 CMR 60.03(26). Emissions in milestone years which are between the analysis years may be determined by interpolation.
- (f) This criterion is met if the regional VOC and NO<sub>x</sub> emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the "Action" scenario are less than the emissions predicted from the "Baseline" scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis shall show that the "Action" scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.
- (g) The requirements of 310 CMR 60.03(21) shall lapse upon EPA approval of the control strategy SIP revision.
- (22) Reductions in Ozone and CO Areas in the Interim and Transitional Periods (TIP).
- (a) A TIP shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in 310 CMR 60.03(22)(b) through (f).

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(b) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area (1996 for moderate CO nonattainment areas and 1999 for serious ozone nonattainment areas), or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) The "Baseline" scenario is defined as the future transportation system that would result from current programs, composed of the following (except that projects listed in 310 CMR 60.03(30) and (31) need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;
2. All ongoing travel demand management or transportation system management activities; and
3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project shall be included in the "Action" scenario, as described in 310 CMR 60.03(22)(d).)

(d) Define the "Action" scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in 310 CMR 60.03(30) and (31) need not be explicitly considered):

1. All facilities, services, and activities in the "Baseline" scenario;
2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the SIP;
3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the SIP 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 on the TIP;
4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the SIP or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;
5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios, and determine the difference in regional VOC and NO<sub>x</sub> emissions (unless the Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of 310 CMR 60.03(26). Emissions in milestone years which are between analysis years may be determined by interpolation.

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(f) This criterion is met if the regional VOC and NO<sub>x</sub> emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the "Action" scenario are less than the emissions predicted from the "Baseline" scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis shall show that the "Action" scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

(g) The requirements of 310 CMR 60.03(22) shall lapse upon EPA approval of the control strategy SIP revision.

(23) Reductions for Ozone and CO Areas in the Interim and Transitional Periods (Project not from a Plan and TIP).

(a) A Transportation project which is not from a conforming transportation plan and TIP shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of 310 CMR 60.03(21) and which includes the transportation plan and project in the "Action" scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "Baseline" scenario shall include the project with its original design concept and scope, and the "Action" scenario shall include the project with its new design concept and scope.

(b) The requirements of 310 CMR 60.03(23)(b) shall lapse upon EPA approval of the control strategy SIP revision.

(24) Transition from the Interim Period and Transitional Periods to the Control Strategy Period.

(a) Areas which submit a control strategy SIP revision after November 24, 1993.

1. The transportation plan and TIP shall be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy SIP revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

a. The conformity of new transportation plans and TIPs may be demonstrated according to interim period criteria and procedures for 90 days following submission of the control strategy SIP revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in 310 CMR 60.03(24)(a)1.

b. Beginning 90 days after submission of the control strategy SIP revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

2. If EPA disapproves the submitted control strategy SIP revision and so notifies the Commonwealth, MPO, and DOT, which initiates the sanction process under Clean Air Act §§ 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy SIP revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

3. Notwithstanding 310 CMR 60.03(24)(a)2., if EPA disapproves the submitted control strategy SIP revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of 310 CMR 60.03(24)(a)1. shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy SIP revision is submitted to EPA and found to be complete.

(b) Areas which have not submitted a control strategy SIP revision.

1. For areas whose Clean Air Act deadline for submission of the control strategy SIP revision is after November 25, 1993 and EPA has notified the Commonwealth, MPO, and DOT of a failure to submit a control strategy SIP revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

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- a. No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and
  - b. The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.
2. For areas whose Clean Air Act deadline for submission of the control strategy SIP was before November 24, 1993 and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act §§ 179 or 110(m), the following applies unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
    - a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and
    - b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
- (c) Areas Which Have not Submitted a Complete Control Strategy SIP Revision.
1. For areas where EPA notifies the Commonwealth, MPO, and DOT after November 24, 1993 that the control strategy SIP revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following applies unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
    - a. No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and
    - b. The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.
    - c. Notwithstanding 310 CMR 60.03(24)(c)1.a. and b., if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act §110(a)(2)(A), the provisions of 310 CMR 60.03(24)(a)1. shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy SIP revision is submitted to EPA and found to be complete.
  2. For areas where EPA has determined before November 24, 1993 that the control strategy SIP revision is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
    - a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and
    - b. The conformity status of the transportation plan and TIP shall lapse November 24, 1994, and no new project-level conformity determinations may be made.
    - c. Notwithstanding 310 CMR 60.03(24)(c)2.i. and ii., if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of 310 CMR 60.03(24)(d)1. shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy SIP revision is submitted to EPA and found to be complete.
- (d) Areas which submitted a control strategy SIP before November 24, 1993.
1. The transportation plan and TIP shall be demonstrated to conform according to transitional period criteria and procedures by November 24, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.

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- a. The conformity of new transportation plans and TIPs may be demonstrated according to interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in 310 CMR 60.03(24)(d)1.
  - b. Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
2. If EPA has disapproved the most recent control strategy SIP submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy SIP revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.
  3. Notwithstanding 310 CMR 60.03(24)(d)2., if EPA has disapproved the submitted control strategy SIP revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of 310 CMR 60.03(24)(d)1. shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993 unless another control strategy SIP revision is submitted to EPA and found to be complete.
- (e) Projects. If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of 310 CMR 60.03(24)(e)1. and 2. shall be met.
1. Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the Department shall be consulted in accordance with 310 CMR 60.03(6) on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "Action" scenario (as required by 310 CMR 60.03(21) through (23) and 310 CMR 60.03(34) through (36) compare to the motor vehicle emissions budget in the SIP submission or the projected motor vehicle emissions budget in the SIP under development.
  2. In the event of unresolved issues on project-level conformity determinations, the Department shall make a project-level finding of non-concurrence with the SIP in writing to EPA and DOT for further action.
- (f) Redetermination of Conformity of the Existing Transportation Plan and TIP According to the Transitional Period Criteria and Procedures.
1. The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by 310 CMR 60.03(24)(a)1. and (d)1.) does not require new emissions analysis and does not have to satisfy the requirements of 310 CMR 60.03(11) and (12) if:
    - a. The control strategy SIP revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and
    - b. The control strategy SIP does not include any transportation projects which are not included in the transportation plan and TIP.
  2. A redetermination of conformity as described in 310 CMR 60.03(f)1. is not considered a conformity determination for the purposes of 310 CMR 60.03(5)(c)4. or (d)4. regarding the maximum intervals between conformity determinations. Conformity shall be determined according to all the applicable criteria and procedures of 310 CMR 60.00 within three years of the last determination which did not rely on 310 CMR 60.03(24)(f)1.
- (g) Ozone nonattainment areas.
1. The requirements of 310 CMR 60.03(24)(b)1. apply if a serious or above ozone nonattainment area has not submitted the SIP revision required to be submitted to EPA by November 15, 1994 under §§ 182(c)(2)(A) and 182(c)(2)(B) of the Clean Air Act is not submitted, even if the area has submitted the SIP revision which CAA § 182(b)(1) requires to be submitted to EPA November 15, 1993.

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2. The requirements of 310 CMR 60.03(24)(b)1. apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by the CAA § 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstrations by that date. The requirements of 310 CMR 60.03(24)(b)1. apply in this case even if the area has submitted the 15% emission reduction demonstration required by the CAA § 182(b)(1).
  3. The requirements of 310 CMR 60.03(24)(a) apply when the SIP revisions required by CAA §§ 182(c)(2)(A) and 182(c)(2)(B) are submitted.
- (h) Maintenance plans. If a control strategy SIP revision is not submitted to EPA but a maintenance plan required by Clean Air Act § 175A is submitted to EPA, the requirements of 310 CMR 60.03(24)(a) or (d) apply, with the maintenance plan submission treated as a "control strategy SIP revision" for the purposes of those requirements.

(25) Requirements for Adoption or Approval of Projects by Recipients of Funds Designated under Title 23 U.S.C. or the Federal Transit Act. No recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of 310 CMR 60.03(14) and the requirements of 310 CMR 60.03(25)(a) through (e) are met (Adopt or approve, for the purposes of 310 CMR 60.03(25), shall mean the point after which the review of project alternatives has been completed and the project has been defined by the final NEPA document or by the final MEPA environmental document and after which the final project alternative for final design and construction have been determined):

- (a) The project comes from a conforming transportation plan and TIP consistent with the requirements of 310 CMR 60.03(15);
- (b) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;
- (c) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the SIP consistent with the requirements of 310 CMR 60.03(19);
- (d) During the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of 310 CMR 60.03(23) (in ozone and CO nonattainment areas) or 310 CMR 60.03(36) in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas); or
- (e) During the transitional period, the project satisfies the requirements of both 310 CMR 60.03(25)(c) and (d).

(26) Procedures for Determining Regional Transportation-Related Emissions.

- (a) General requirements.
  1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by 310 CMR 60.03(6). Projects which are not regionally significant are not required to be explicitly modeled using the network-based transportation demand model, but VMT and emissions from such projects shall be estimated by the MPO 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.

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2. The emissions analysis shall not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.
  3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented shall not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the SIP, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.
  4. Notwithstanding 310 CMR 60.03(26)(a)3., during the transitional period, control measures or programs which are committed to in a SIP as described in 310 CMR 60.03(17) through (19), but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of 310 CMR 60.03(17) through (19) are satisfied.
  5. A regional emissions analysis for the purpose of satisfying the requirements of 310 CMR 60.03(21) through (23) may account for the programs in 310 CMR 60.03(26)(a)4., but the same assumptions about these programs shall be used for both the "Baseline" and "Action" scenarios.
- (b) Serious, Severe and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995, estimates of regional transportation-related emissions used to support conformity determinations shall be made according to procedures which meet the requirements in 310 CMR 60.03(26)(b)1. through 5.
1. A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies shall be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:
    - a. The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;
    - b. The network-based model(s) shall be validated against ground counts for a base year that is not more than ten years prior to the date of the conformity determination. Land use, population, and other inputs shall be based on the best available information and appropriate to the validation base year;
    - c. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology shall be used;
    - d. Zone-to-zone travel times used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;
    - e. Free-flow speeds on network links shall be based on empirical observations;
    - f. Peak and off-peak travel demand and travel times shall be provided;
    - g. Trip distribution and mode choice shall be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

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- h. The model(s) shall utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;
  - i. A dependence of trip generation on the accessibility of destinations via the transportation network (including pricing) is specifically required as soon as possible as the use of such a network model becomes feasible and practicable. Such a model would assess the impact of proposed transportation infrastructure changes on land use pattern, and incorporate feedback from that assessment in calculating trip generation rates, trip distribution and mode splits, and vehicle miles of travel.
  - j. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and
  - k. Consideration of emissions increases from construction-related congestion is not specifically required.
2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.
  3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.
  4. Reasonable methods in accordance with good practice shall be used to estimate VMT and emissions from exempt projects not included in the network-based model in accordance with 310 CMR 60.03(6)(c)1.g.
  5. Reasonable methods in accordance with good practice shall be used to estimate VMT and emissions from federal actions reported to EOTC and the MPO in accordance with 310 CMR 60.04, "Criteria for Determining Conformity of General Federal Actions".
  6. Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.
  7. Ambient temperatures shall be consistent with those used to establish the motor vehicle emissions budget in the SIP. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to 310 CMR 60.03(6) if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the SIP.
- (c) Areas Which are not Serious, Severe, or Extreme Ozone Nonattainment Areas or Serious Carbon Monoxide Areas, or Before January 1, 1995.
1. Procedures which satisfy some or all of the requirements of 310 CMR 60.03(26)(a) shall be used in all areas not subject to 310 CMR 60.03(26)(a) in which those procedures have been the previous practice of the MPO.
  2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

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(d) Projects Not From a Conforming Plan and TIP in Isolated Nonattainment and Maintenance Areas. 310 CMR 60.03(26)(d) applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

1. Conformity demonstrations for projects in these areas may satisfy the requirements of 310 CMR 60.03(19), (23) and (36) with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

2. The requirements of 310 CMR 60.03(19) shall be satisfied according to the procedures in 310 CMR 60.03(19)(c), with references to the "transportation plan" taken to mean the statewide transportation plan.

3. The requirements of 310 CMR 60.03(23) and (36) which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

4. The requirement of 310 CMR 60.03(25)(b) shall be satisfied if:

a. The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of 310 CMR 60.03(19) or (23) or (36) (as modified by 310 CMR 60.03(26)(d)2. and 3.), as appropriate for the time period and pollutant; and

b. The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

(e) PM<sub>10</sub> From Construction-Related Fugitive Dust.

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

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

(27) Procedures for Determining Localized CO Concentrations (Hot-Spot Analysis).

(a) In the following cases, CO hot-spot analyses shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51 Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2-78-027R), unless, after the interagency consultation process described in 310 CMR 60.03(6) and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

1. For projects in or affecting locations, areas, or categories of sites which are identified in the SIP as sites of current violation or possible current violation;

2. For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

3. For any project involving or affecting any of the intersections which the SIP identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

4. For any project involving or affecting any of the intersections which the SIP identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

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5. Where use of the "Guideline" models is practicable and reasonable given the potential for violations.
- (b) In cases other than those described in 310 CMR 60.03(27)(a), other quantitative methods may be used if they represent reasonable and common professional practice.
- (c) CO hot-spot analyses shall include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors and then applying the ratio to the background value.
- (d) PM<sub>10</sub> hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM<sub>10</sub> hot-spot analysis shall be determined through the interagency consultation process required in 310 CMR 60.03(6). In PM<sub>10</sub> nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations and activity levels. The requirements of 310 CMR 60.03(27)(d) for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces that these requirements are in effect in the *Federal Register*.
- (e) Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.
- (f) CO and PM<sub>10</sub> 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 the implementation of such measures, as required by 310 CMR 60.03(29)(a).
- (g) CO and PM<sub>10</sub> 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.
- (28) Using the Motor Vehicle Emissions Budget in the SIP.
- (a) In interpreting a SIP motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the SIP or SIP submission. Unless the SIP explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the SIP's estimate of future emissions. This applies in particular to the SIP which demonstrate that after implementation of control measures in the SIP:
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) A conformity demonstration shall not trade emissions among budgets which the SIP allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.
- (c) If the SIP 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 SIP explicitly indicates an intent to create such subarea budgets for the purposes of conformity.
- (d) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs shall collectively make a conformity determination for the entire nonattainment area.

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(29) Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA shall obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local CO or PM<sub>10</sub> impacts. Before making conformity determinations written commitments shall also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by 310 CMR 60.03(17) through (19) and (21) through (23) or used in the project-level hot-spot analysis required by 310 CMR 60.03(16) and (20).

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

(c) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of 310 CMR 60.03(16), (17), and (18) are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 310 CMR 60.03(6). The MPO and DOT shall confirm that the transportation plan and TIP still satisfy the requirements of 310 CMR 60.03(17) and (18) and that the project still satisfies the requirements of 310 CMR 60.03(16), and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

(30) Exempt Projects. Notwithstanding the other requirements of 310 CMR 60.03, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (*see* 310 CMR 60.03(6)(c)1.(viii), the EPA, the Department 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 shall ensure that exempt projects do not interfere with TCM implementation.

Table 2. - Exempt Projects

<b>SAFETY</b>
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 and crash cushions
Pavement resurfacing and/or rehabilitation
Pavement marking demonstration
Emergency relief (23 U.S.C. 125)
Fencing

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Table 2. - Exempt Projects (continued)

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
<b>MASS TRANSIT</b>
Operating assistance to transit agencies
Purchase of support vehicles
Rehabilitation of transit vehicles <sup>4</sup>
Purchase of office, shop and operating equipment for existing facilities
Purchase of operating equipment for vehicles (e.g. radios, fareboxes, lifts, etc.)
Construction or renovation of power, signal and communications systems
Construction of small passenger shelters and information kiosks
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations terminals, and ancillary structures)
Rehabilitation or reconstruction of track structures, track and trackbed in existing rights-of-way
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet <sup>1</sup>
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771
<b>AIR QUALITY</b>
Continuation of ridesharing and vanpooling promotion activities at current levels
Bicycle and pedestrian facilities
<b>OTHER</b>
Specific activities which do not involve or lead directly to construction, such as: planning and technical studies grants for training and research programs planning activities conducted pursuant to titles 23 and 49 U.S.C. federal-aid systems revisions
Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action
Noise attenuation
Advance land acquisitions (23 CFR 712 or 23 CFR 771)
Acquisition of scenic easements
Plantings, landscaping, etc.
Sign removal
Directional and informational signs

<sup>4</sup>PM<sub>10</sub> nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the SIP.

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Table 2. - Exempt Projects (continued)

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

(31) Projects Exempt From Regional Emissions Analyses. Notwithstanding the other requirements of 310 CMR 60.03(31), highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM<sub>10</sub> concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (*see* 310 CMR 60.03(31)(6)(c)1.h., the EPA, the Department and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3. - Projects Exempt From Regional Emissions Analyses

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

(32) Criteria and Procedures for PM<sub>10</sub> and NO<sub>2</sub> Nonattainment Areas. The requirements of 310 CMR 60.03(33) through (36) shall be applicable only at such time that the Commonwealth of Massachusetts is redesignated by EPA from a PM<sub>10</sub> or NO<sub>2</sub> attainment area to a PM<sub>10</sub> or NO<sub>2</sub> nonattainment area.

(33) Compliance With PM<sub>10</sub> Control Measures. The FHWA/FTA project shall comply with PM<sub>10</sub> control measures in the SIP. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM<sub>10</sub> emissions from the construction activities and/or normal use and operation associated with the project) contained in the SIP are included in the final plans, specifications, and estimates for the project.

(34) Reductions in PM<sub>10</sub> and NO<sub>2</sub> Areas in the Interim and Transitional Periods (Transportation Plan).

(a) A transportation plan shall contribute to emission reductions or shall not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either 310 CMR 60.03(34)(b) or (c) are met.

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(b) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of  $PM_{10}$  in a  $PM_{10}$  nonattainment area (and of each transportation-related precursor of  $PM_{10}$  in  $PM_{10}$  nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the  $PM_{10}$  nonattainment problem and has so notified the MPO and DOT) and of  $NO_x$  in an  $NO_2$  nonattainment area, by performing a regional emissions analysis as follows:

1. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for  $NO_2$  areas) or four years and six months following the date of designation (for  $PM_{10}$  areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
2. Define for each of the analysis years the "Baseline" scenario, as defined in 310 CMR 60.03(21)(c), and the "Action" scenario, as defined in 310 CMR 60.03(21)(d).
3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference between the two scenarios in regional  $PM_{10}$  emissions in a  $PM_{10}$  nonattainment area (and transportation-related precursors of  $PM_{10}$  in  $PM_{10}$  nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the  $PM_{10}$  nonattainment problem and has so notified the MPO and DOT) and in  $NO_x$  emissions in an  $NO_2$  nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of 310 CMR 60.03(26). The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.
4. Demonstrate that the regional  $PM_{10}$  emissions and  $PM_{10}$  precursor emissions, where applicable, (for  $PM_{10}$  nonattainment areas) and  $NO_x$  emissions (for  $NO_2$  nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

(c) Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of  $PM_{10}$  in a  $PM_{10}$  nonattainment area (and transportation-related precursors of  $PM_{10}$  in  $PM_{10}$  nonattainment areas if the EPA Regional Administrator or the director of the Air Division of the Department has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the  $PM_{10}$  nonattainment problem and has so notified the MPO and DOT) and of  $NO_x$  in an  $NO_2$  nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

1. Determine the baseline regional emissions of  $PM_{10}$  and  $PM_{10}$  precursors, where applicable (for  $PM_{10}$  nonattainment areas) and  $NO_x$  (for  $NO_2$  nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the SIP revision required by § 51.396 of the federal conformity rule defines the baseline emissions for a  $PM_{10}$  area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

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2. Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of 310 CMR 60.03(26). Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO<sub>2</sub> areas) or four years and six months following the date of designation (for PM<sub>10</sub> areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
  3. Demonstrate that for each analysis year the emissions estimated in 310 CMR 60.03(34)(c)2. are no greater than baseline emissions of PM<sub>10</sub> and PM<sub>10</sub> precursors, where applicable (for PM<sub>10</sub> nonattainment areas) or NO<sub>x</sub> (for NO<sub>2</sub> nonattainment areas) from highway and transit sources.
- (35) Reductions in PM<sub>10</sub> and NO<sub>2</sub> areas in the interim and transitional periods (TIP).
- (a) A TIP shall contribute to emission reductions or shall not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either 310 CMR 60.03(35)(b) or (c) are met.
  - (b) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area (and transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT) and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area, by performing a regional emissions analysis as follows:
    1. Determine the analysis years for which emissions are to be estimated, according to the requirements of 310 CMR 60.03(34)(b)1.
    2. Define for each of the analysis years the "Baseline" scenario, as defined in 310 CMR 60.03(22)(c), and the "Action" scenario, as defined in 310 CMR 60.03(22)(d).
    3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios as required by 310 CMR 60.03(34)(b)3., and make the demonstration required by 310 CMR 60.03(34)(b)4.
  - (c) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area (and transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT) and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by 310 CMR 60.03(34)(c)1. through 3.

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(36) Reductions in PM<sub>10</sub> and NO<sub>2</sub> areas in the interim and transitional periods (project not from a plan and TIP). A transportation project which is not from a conforming transportation plan and TIP shall contribute to emission reductions or shall not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of 310 CMR 60.03(34) and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and 310 CMR 60.03(34)(b) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario shall 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.

60.04: MB City of Cambridge Vehicle Trip Reduction Program

(1) Purpose. 310 CMR 60.04 authorizes the City of Cambridge to implement a vehicle trip reduction program to achieve a combination of reductions in vehicle trips, vehicle miles travelled and vehicle emissions so as to allow for the addition of commercial parking spaces and the added vehicle trips they generate with no net negative impact on air quality. 310 CMR 60.04 authorizes the City of Cambridge to implement the vehicle trip reduction program as a replacement and substitution to the Cambridge Parking Freeze.

(2) Definitions.

Automobile Efficiency Rate means the figure calculated by dividing the number of employees who report to a worksite within the City of Cambridge between 6:00 A.M. and 10:00 A.M. inclusive (Monday through Friday to achieve a five consecutive weekday average) by the number of vehicles used by those employees to reach the worksite during those hours. Bicycles, public transit vehicles, and approved Clean-Fuel vehicles shall be excluded from the vehicles counted. Motorcycles and light trucks shall be included in the vehicles counted.

Cambridge Parking Freeze means the regulation for a commercial parking freeze in the City of Cambridge at 40 CFR section 52.1128 and 52.1135, as modified by *South Terminal Corp. v. EPA*, 502 F.2d 646, 671-672 (1st Cir. 1974) and the 1978 and 1983 Transportation Elements of the SIP, which limited commercial parking spaces in the City to a total of 13,452 spaces.

Caravan means Caravan for Commuters Inc., a private, non-profit commuter services company which develops and markets commuter transportation services.

Carpool means a vehicle carrying two to seven passengers.

City means the City of Cambridge, Massachusetts.

Clean fuel means any fuel or power source used in a vehicle that complies with the applicable standards for clean fueled vehicles contained in §§ 241-245 of the Clean Air Act, 42 U.S.C. §§ 7581-7595.

Clean fueled vehicle means a vehicle in a class or category of vehicles which has been certified to meet the applicable clean-fuel vehicle standards as defined by and pursuant to the federal Clean Air Act Amendments of 1990.

Commercial parking space means a parking space available for use by the general public at any time for a fee and shall not include:

- (a) parking spaces which are owned or operated by a commercial entity whose primary business is other than the operation of parking facilities, for the exclusive use of its lessees, employees, patrons, customers, clients, patients, guests or residents and not available for use by the general public;
- (b) parking spaces restricted for the use of the residents of a specific residential building or group of buildings;
- (c) spaces located on public streets; or

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(d) spaces located at a park-and-ride facility operated in conjunction with the Massachusetts Bay Transportation Authority.

Department means the Department of Environmental Protection.

EPA means the United States Environmental Protection Agency.

Flex Time means a wide range of flexible scheduling procedures that allows employees to set their own start times at their place of employment with the purpose of avoiding peak commute periods.

Four-day Workweek means a provision which allows employees to work the number of hours normally worked in a five-day period in a four-day period.

Monitoring and Demonstration Plan means the monitoring and demonstration plan developed by the City and approved by DEP on July 17, 1996 for use by the City in connection with 310 CMR 60.04 and as it may be amended by the City in consultation with DEP.

MBTA means the Massachusetts Bay Transportation Authority.

Oversight Committee means a panel jointly appointed by the Department and the City.

Preferential Parking means parking spaces reserved for motor vehicles such as carpools, vanpools, ULEVs and ZEVs which produce lower emissions than a single occupant vehicle. Preferential parking may be provided in more convenient locations to destinations as an incentive to utilize lower emitting modes of travel.

SIP is the portion (or portions) of the state implementation plan, or most recent revision thereof, approved under § 110 of the Clean Air Act, or promulgated under § 110(c), or promulgated under § 301(d) and which implements the relevant requirements of the Clean Air Act.

Telecommuting means working at home or at a satellite facility which substantially reduces the VMT which would occur by working at the primary employment location.

ULEV means an ultra low emitting vehicle as defined at 310 CMR 7.40.

Vanpool means a vehicle carrying eight or more passengers.

VMT means vehicle miles travelled.

Vehicle trip reduction programs are programs designed to reduce VMT or vehicle trips by influencing travel behavior and demand or by reducing air emissions from mobile sources by utilizing clean fuels.

ZEV means a zero emitting passenger car or light duty truck which produces zero emissions under any and all possible operations.

(3) Applicability. 310 CMR 60.04 is applicable within the geographic boundaries of the City of Cambridge.

(4) Terms of the Vehicle Trip Reduction Program.

(a) The City shall implement a vehicle trip reduction program that offsets VMT associated with the issuance of new commercial parking space permits in Cambridge in excess of the number allowed by the Cambridge Parking Freeze (13,452 spaces), to maintain a level of air emissions less than or equal to those estimated to occur absent replacement and substitution of the Cambridge Parking Freeze.

(b) As of the date of approval by EPA of 310 CMR 60.04 as an amendment to the Massachusetts SIP, the City may issue new parking permits for commercial parking spaces in excess of the number allowed by the Cambridge Parking Freeze provided:

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1. the City is implementing vehicle trip reduction measures to offset the air emissions associated with such new commercial parking spaces in excess of the number allowed by the Cambridge Parking Freeze; and
  2. either a report has been submitted by the City and has been approved by the Department pursuant to 310 CMR 60.04(12) or else the City has submitted a certification that fewer than 13,452 commercial parking spaces exist in the City.
- (c) Prior to EPA approval of 310 CMR 60.04 as an amendment to the Massachusetts SIP, the City shall not issue more than 81 new commercial parking space permits unless the permits are issued to replace other commercial parking spaces that have been permanently taken out of service as commercial parking spaces after July 17, 1996.
- (d) Prior to issuing parking permits for commercial parking spaces pursuant to 310 CMR 60.04(4)(c), the City shall notify the Department and EPA.
- (5) Vehicle Trip Reduction Program.
- (a) The City's vehicle trip reduction program may include, but shall not be limited to, the measures described in 310 CMR 60.04.
- (b) Municipal Employee Trip Reduction Measure.
1. The City may implement a municipal employee trip reduction measure applicable to municipal departments and employees in the City. The measure may include some or all of the following requirements:
    - a. the provision of incentives, assistance and information on alternative modes of travel to the single occupant vehicle to all municipal employers and employees;
    - b. preferential parking for carpools, vanpools, ULEVS, and ZEVs;
    - c. the provision of an employee shuttle service;
    - d. financial subsidies and incentives for use of public transit;
    - e. alternative work schedules including the provision of flex-time, telecommuting and/or four day workweek to employees; and
    - f. restrictions on or reduction of employee parking spaces.
  2. If the City chooses this option, it shall monitor the effectiveness of the municipal vehicle trip reduction measure by tracking some or all of the following:
    - a. improvements to the automobile efficiency rate for municipal employees;
    - b. the number of transit pass sales sold through payroll deduction;
    - c. ridership levels of employee shuttle services;
    - d. the number of preferential parking spaces for employees;
    - e. the number of users of Caravan for Commuters, Inc. ridematching services; and
    - f. the number of bicycles, ULEVS, ZEV fleet vehicles used or operated by municipal employees.
- (c) Increase of the Municipal Parking Rates.
1. The City may permanently increase parking fees for daily parking at City-owned, off-street parking facilities.
  2. If the City chooses this option, it shall monitor and track the extent and amount of rate increases for each municipal parking facility.
- (d) Bicycle and Pedestrian Mobility Measure.
1. The City may design, fund, and implement programs to improve bicycle and pedestrian mobility. The bicycle and pedestrian mobility measure may include some or all of the following components:
    - a. the designation of a city bicycle and/or pedestrian coordinator;
    - b. the development of a master plan and improvements to the street network for bicycle and pedestrian access;
    - c. installation of bicycle racks and storage facilities;
    - d. the provision of bicycles for use by City police, Traffic and Parking Department personnel and other municipal employees; and
    - e. the addition of exclusive bicycle lanes on major streets.
  2. If the City chooses this option, it shall monitor the effectiveness of the bicycle and pedestrian mobility measure by tracking some or all of the following:
    - a. the amount of linear feet of exclusive bicycle lanes;
    - b. the number of bicycle parking facilities;
    - c. the number of City-owned bicycles available for use by municipal employees; and
    - d. the maintenance of infrastructure improvements.

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- (e) **Transportation Demand Management for Expansions and New Development.**
1. The City may develop and implement an ongoing transportation demand management measure which may be applicable to new and expanded municipal facilities of 25,000 square feet or more and to those private development projects of 75,000 square feet or more that are subject to special permits. The transportation demand management measure may require some or all of the following:
    - a. designating a transportation management coordinator responsible for distributing information and coordinating traffic management programs within the new development;
    - b. discouraging or restricting use of parking spaces by single-occupant vehicles;
    - c. funding local or area-wide shuttle services to public transit stations and/or shopping centers;
    - d. encouragement of flextime for employees of all tenants;
    - e. promotion of the use of public transportation by providing transit information and participation in the MBTA commuter pass program;
    - f. operation of a computer-based ridesharing information bank or coordination of ridesharing promotional programs with any existing commuter mobility program;
    - g. preferential parking;
    - h. establishing reduced parking fees or providing subsidies for carpool and vanpool parking;
    - i. encouragement of local employment opportunities by tenants of the new development; and
    - j. providing safe, convenient, sheltered bicycle storage facilities and/or shower facilities for bicycle commuters.
  2. If the City chooses this option, it shall monitor the effectiveness of the transportation demand management measure by tracking some or all of the following for each such new or expanded municipal development:
    - a. the number of users of Caravan for Commuters, Inc. services;
    - b. the number of transit pass sales through payroll deduction;
    - c. the number of riders on employee shuttles; and
    - d. the number of carpool/vanpool/ULEV/ZEV parking spaces and bicycle facilities.
  3. If the City chooses this option, it shall monitor the effectiveness of the transportation demand management measure by tracking the following for each such new or expanded private development:
 

transportation demand management requirements under a special permit from the Planning Board which may include but need not be limited to some or all of the following.

    - a. the number of users of Caravan for Commuters, Inc. services;
    - b. the number of transit pass sales through payroll deduction;
    - c. the number of riders on employee shuttles; and
    - d. the number of carpool/vanpool/ULEV/ZEV parking spaces and bicycle facilities.
- (6) **Feasibility Studies.** Within three years of December 26, 1997, the City shall complete the following studies:
- (a) **Promotion of Clean Fuels and Low/Zero Emission Vehicles.**
    1. The City shall complete a study and recommend ways to promote and provide incentives for the use of clean fuels and low/zero emission vehicles within the City. Such incentives may include, at a minimum, special permits or preferential parking for residents and others with ULEVs or ZEVS, and conversion of vehicle fleets to clean fuels.
    2. The City may implement the outcome of the study.
    3. If the City chooses this option, it shall monitor the effectiveness of implementing clean fuel and low/zero emission vehicle strategies by tracking the following:
      - a. number of ULEV, ZEV fleet vehicles within City;
      - b. number of refueling stations for alternative fuel vehicles;
      - c. number of City-regulated preferential parking spaces for ULEV/ZEV.
  - (b) **Taxi Cab Improvements.**
    1. The City shall complete a study and make recommendations on methods to make taxi cabs more accessible for use by multiple passengers with different destinations.

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2. The City may study the role of taxi cabs in a para-transit system for the City.
  3. The City may study incentives for conversion of taxi fleets to clean fuels and/or zero emission vehicles.
  4. The City may implement the outcome of the study.
  5. If the City chooses this option, it shall monitor the effectiveness of implementing taxi cab improvements by tracking the following:
    - a. the extent taxi cabs play in the paratransit system;
    - b. ridership levels;
    - c. the number of vouchers issued;
    - d. the number of fleet/vehicle conversions.
- (c) Zoning.
1. The City of Cambridge shall complete a study and recommend revisions to the Cambridge Zoning Ordinance to promote reductions of VMT and traffic congestion and to increase commuting alternatives to the single-occupant vehicle. The City shall consider: densities to achieve the goal of reduced VMT; eliminating the exclusion of parking in the calculation of gross floor area; reducing the minimum and maximum parking requirements; including special provisions for carpools and vanpools; and encouraging mixed-use developments.
- (7) Travel Demand Management. The City shall work and coordinate with the Commonwealth and the Department to explore additional ways to manage travel demand and demand for parking in the City and ways in which it can facilitate the transfer of parking space permits and/or parking spaces in the City.
- (8) City Enforcement Programs.
- (a) The City shall inspect periodically non-residential parking facilities to ensure that they are operating pursuant to and in compliance with appropriate permits and approvals and that non-commercial spaces are being used solely for non-commercial purposes and are not available as commercial parking spaces. The City shall take enforcement action against violators. The City shall forward copies of all inspection reports to the Department.
  - (b) The City may focus on enforcement of statutory and regulatory prohibitions against idling by buses, trucks, taxis and automobiles in accordance with the requirements set forth in 310 CMR 7.11(1)(b), Air Pollution Control Regulations, U Transportation Media.
- (9) Coordination Activities.
- Improved Coordination with the MBTA.
- (a) The City may work with the MBTA to improve the accessibility of public transit and to explore the development of a local para-transit system in the City.
  - (b) The City may identify barriers to use of the MBTA by residents and commuters.
  - (c) The City may conduct public forums throughout the city to assess transit needs and to inform residents and commuters of transit options.
  - (d) If the City chooses this option, it shall monitor the effectiveness of improved coordination with the MBTA by documenting the following:
    1. City efforts to improve routing of buses to reduce number of connections and changes
    2. the number of bicycle parking facilities at or near subway and bus transit nodes
    3. the number of locations and volume of distribution of MBTA routes and schedule information
    4. improved multi-modal linkages between MBTA stations and bike and pedestrian facilities
- (10) Monitoring and Demonstration Plan.
- (a) The City shall implement the Monitoring and Demonstration Plan.
  - (b) The City shall continuously monitor the number of commercial parking spaces within the City and the effectiveness of the vehicle trip reduction program implemented in the City in achieving a combination of reductions in VMT, vehicle trips and vehicle air emissions to confirm that the requirement of 310 CMR 60.04(4)(a) is being met.

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(c) If the number of commercial parking spaces in the City exceeds 13,452 spaces and the Monitoring and Demonstration Plan does not demonstrate that the requirements of 310 CMR 60.04(4)(a) have been met, the City shall be prohibited from issuing any commercial parking space permits.

(11) Recordkeeping and Reporting.

(a) Beginning one year after EPA approves 310 CMR 60.04 as a SIP amendment and as a replacement of 40 C.F.R. §§ 52.1128, 52.1135 and every year for three years, and every other year thereafter, the City shall complete a report on the vehicle trip reduction programs and strategies in place in the City. This report shall include the status and progress of the programs and studies required by 310 CMR 60.04. Said report shall include:

1. a description of each vehicle trip reduction measure and its implementation status;
2. an inventory of commercial parking spaces permitted by the City pursuant to 310 CMR 60.04;
3. a compilation of supporting data collected pursuant to 310 CMR 60.04(10) or other supporting data, if available; and
4. a certification by the City that the vehicle trip reduction measures are being implemented in a manner consistent with the assumptions in the Report to determine emissions associated with new parking permits for commercial parking spaces pursuant to 310 CMR 60.04(4)(a) in excess of the number allowed by the Cambridge Parking Freeze.

(b) The City shall submit copies of the status report to the Department, EPA Region I and the chairman of the Boston Metropolitan Planning Organization.

(c) The City shall maintain records that document the assumptions used in the Report to determine emissions reductions from the City's Vehicle Trip Reduction Program and to demonstrate compliance with 310 CMR 60.04(4)(a).

(12) Monitoring and Demonstration Report Review.

(a) For those years in which a report is required to demonstrate that the City is offsetting air emissions associated with that number of commercial parking spaces permitted in the City in excess of 13,452, the City shall submit the Monitoring and Demonstration Report to the Department. Within 45 days of receipt of the Report, the Department shall either:

1. render a determination of its adequacy or inadequacy; or
2. submit the report to the Oversight Committee for review and comment.

(b) The Oversight Committee is authorized to review the effectiveness of the vehicle trip reduction program at offsetting air emissions and VMT associated with new commercial parking spaces permitted in excess of the number allowed by the Cambridge Parking Freeze, recommend ways to improve the effectiveness of the program and advise the Department whether the City has met its obligations under 310 CMR 60.04(4)(a). The Oversight Committee shall submit its advice to the Department within 60 days of receipt of a Monitoring and Demonstration Report.

(c) If the Oversight Committee, based on its review of the Monitoring and Demonstration Report, advises the Department that the City has met its obligations under 310 CMR 60.04(4)(a), the Report shall be approved by the Department within 30 days unless the Department finds, based on additional information, that 310 CMR 60.04(4)(a) has not been met.

(d) If the Oversight Committee, based on its review of the Monitoring and Demonstration Report, advises the Department that the City has failed to meet its obligations, the Department shall hold a public hearing within 45 days of receipt of the Oversight Committee's advice. Within 60 days after the public hearing, the Department will issue a finding of adequacy or inadequacy, depending on the results of the review and public comment.

(e) If the Report is found inadequate pursuant to 310 CMR 60.04(12), and notwithstanding a request for an adjudicatory hearing, the City shall resolve the inadequacies to the satisfaction of the Department prior to issuing any new commercial parking space permits for spaces in excess of 13,452. If the City and the Department are unable to resolve their differences within 60 days, the City may request an adjudicatory hearing on the Department's determination pursuant to M.G.L c. 21A and c. 30A.

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(f) The City has the option to submit a Monitoring and Demonstration Report to the Department in years when such a report is not otherwise required. The City shall submit a Monitoring and Demonstration Report to the Department and the Oversight Committee at such time when there are 13,377 commercial parking spaces permitted in the City in order to identify how the air emissions associated with new commercial parking spaces in excess of 13,452 will be offset.

(13) Enforcement. The Department may enforce 310 CMR 60.04 under applicable law.

(14) Responsibilities Under the Clean Air Act.

(a) Programs included in the Massachusetts SIP or regulations thereunder may not be included in the Cambridge Vehicle Trip Reduction Program for the purposes of 310 CMR 60.04 except to the extent the City's implementation of or contribution to such program or regulation achieves results in excess of the goals established by the SIP for such program or regulation.

(b) The failure of the City of Cambridge to comply with the requirements of 310 CMR 60.04 may be the cause for the Department to make a finding of non-conformity under section 176(c) of the Clean Air Act, 42 U.S.C. 7506(c) and the state and federal Transportation Conformity regulations, 310 CMR 60.03 and 40 CFR Part 51, Subpart T, respectively.

REGULATORY AUTHORITY

310 CMR 60.00: M.G.L. c. 111, § 142M.

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