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

(3) A conformity determination that relies on paragraph (g) of this section does not satisfy the frequency requirements of § 93.104(b) or (c).

[62 FR 43801, Aug. 15, 1997, as amended at 69 FR 40080, July 1, 2004]

§ 93.123 Procedures for determining localized CO, PM$_{10}$, and PM$_{2.5}$ concentrations (hot-spot analysis).

(a) *CO hot-spot analysis.* (1) The demonstrations required by § 93.116 ("Localized CO, PM$_{10}$, and PM$_{2.5}$ violations") must be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51, Appendix W (Guideline on Air Quality Models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in § 93.105 and approved by the EPA Regional Administrator are used:

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

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

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

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

(2) In cases other than those described in paragraph (a)(1) of this section, the demonstrations required by § 93.116 may be based on either:

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

(ii) A qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of § 93.116 are met.

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that (93.116(a) is met without further hot-spot analysis for any project described in paragraphs (a)(1) and (a)(2) of this section based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given CO nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

(b) *PM$_{10}$ and PM$_{2.5}$ hot-spot analyses.* (1) The hot-spot demonstration required by § 93.116 must be based on quantitative analysis methods for the following types of projects:

(i) New highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;

(ii) Projects affecting intersections that are at Level-of-Service D, E, or F with a significant number of diesel vehicles, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;

(iii) New bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;

(iv) Expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location; and

(v) Projects in or affecting locations, areas, or categories of sites which are identified in the PM$_{10}$ or PM$_{2.5}$ applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

(2) Where quantitative analysis methods are not available, the demonstration required by § 93.116 for projects described in paragraph (b)(1) of this section must be based on a qualitative consideration of local factors.

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that § 93.116 is met without further hot-spot analysis for any project described in paragraph (b)(1) of this section based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given $PM_{2.5}$ or PM_{10} nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

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

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

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

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

(4) CO, PM_{10}, or $PM_{2.5}$ mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by § 93.125(a).

(5) CO, PM_{10}, and $PM_{2.5}$ 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.

[58 FR 62235, Nov. 24, 1993, as amended at 71 FR 12510, Mar. 10, 2006; 73 FR 4441, Jan. 24, 2008]

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

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

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

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