

## Environmental Protection Agency

## § 93.109

state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(i) The shortened timeframe of the conformity determination must extend at least to the latest of the following years:

(A) The tenth year of the transportation plan;

(B) The latest year for which an adequate or approved motor vehicle emissions budget(s) is established in the submitted or applicable implementation plan; or

(C) The year after the completion date of a regionally significant project if the project is included in the TIP or the project requires approval before the subsequent conformity determination.

(ii) The conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis, if such a year extends beyond the timeframe of the conformity determination.

(3) For areas that have an adequate or approved CAA section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the conformity determination to extend through the last year of such maintenance plan after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(4) Any election made by an MPO under paragraphs (d)(2) or (d)(3) of this section shall continue in effect until the MPO elects otherwise, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

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

[62 FR 43801, Aug. 15, 1997, as amended at 69 FR 40073, July 1, 2004; 73 FR 4439, Jan. 24, 2008]

### **§ 93.107 Relationship of transportation plan and TIP conformity with the NEPA process.**

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

### **§ 93.108 Fiscal constraints for transportation plans and TIPs.**

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

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

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

(b) Table 1 in this paragraph indicates the criteria and procedures in §§ 93.110 through 93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraph (c) of this section explains when the budget and interim emissions tests are required for each pollutant and NAAQS. Paragraph (d) of this section explains when a hot-spot test is required. Paragraph (e) of this section addresses conformity requirements for areas with approved or adequate limited maintenance plans.

Paragraph (f) of this section addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Paragraph (g) of this section addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

TABLE 1—CONFORMITY CRITERIA

All Actions at all times: § 93.110 § 93.111 § 93.112	Latest planning assumptions Latest emissions model Consultation
Transportation Plan: § 93.113(b) § 93.118 or § 93.119	TCMs Emissions budget and/or Interim emissions
TIP: § 93.113(c) § 93.118 or § 93.119	TCMs Emissions budget and/or Interim emissions
Project (From a Conforming Plan and TIP): § 93.114	Currently conforming plan and TIP
§ 93.115	Project from a conforming plan and TIP
§ 93.116 § 93.117	CO, PM <sub>10</sub> , and PM <sub>2.5</sub> hot-spots. PM <sub>10</sub> and PM <sub>2.5</sub> control measures
Project (Not From a Conforming Plan and TIP): § 93.113(d) § 93.114	TCMs Currently conforming plan and TIP
§ 93.116 § 93.117	CO, PM <sub>10</sub> , and PM <sub>2.5</sub> hot-spots. PM <sub>10</sub> and PM <sub>2.5</sub> control measures
§ 93.118 and/or § 93.119	Emissions budget and/or Interim emissions

(c) *Regional conformity test requirements for all nonattainment and maintenance areas.* This provision applies one year after the effective date of EPA's nonattainment designation for a NAAQS in accordance with § 93.102(d) and until the effective date of revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In all nonattainment and maintenance areas for a NAAQS, the budget test must be satisfied as required by § 93.118 for conformity determinations for such NAAQS made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or main-

tenance plan for such NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the FEDERAL REGISTER; or

(iii) The effective date of EPA's approval of such a budget in the FEDERAL REGISTER, if such approval is completed through direct final rulemaking.

(2) Prior to paragraph (c)(1) of this section applying for a NAAQS, in a nonattainment area that has approved or adequate motor vehicle emissions budgets in an applicable implementation plan or implementation plan submission for another NAAQS of the same pollutant, the following tests must be satisfied:

(i) If the nonattainment area covers the same geographic area as another NAAQS of the same pollutant, the budget test as required by § 93.118 using the approved or adequate motor vehicle emissions budgets for that other NAAQS;

(ii) If the nonattainment area covers a smaller geographic area within an area for another NAAQS of the same pollutant, the budget test as required by § 93.118 for either:

(A) The nonattainment area, using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where such portion(s) can reasonably be identified through the interagency consultation process required by § 93.105; or

(B) The area designated nonattainment for that other NAAQS, using the approved or adequate motor vehicle emissions budgets for that other NAAQS. If additional emissions reductions are necessary to meet the budget test for the nonattainment area for a NAAQS in such cases, these emissions reductions must come from within such nonattainment area;

(iii) If the nonattainment area covers a larger geographic area and encompasses an entire area for another NAAQS of the same pollutant, then either (A) or (B) must be met:

(A)(I) The budget test as required by § 93.118 for the portion of the nonattainment area covered by the approved or adequate motor vehicle emissions budgets for that other NAAQS; and

(2) the interim emissions tests as required by § 93.119 for one of the following areas: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multi-state nonattainment or maintenance area.

(B) The budget test as required by § 93.118 for the entire nonattainment area using the approved or adequate motor vehicle emissions budgets for that other NAAQS.

(iv) If the nonattainment area partially covers an area for another NAAQS of the same pollutant:

(A) The budget test as required by § 93.118 for the portion of the nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where they can be reasonably identified through the interagency consultation process required by § 93.105; and

(B) The interim emissions tests as required by § 93.119, when applicable, for either: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multi-state nonattainment or maintenance area.

(3) In a nonattainment area, the interim emissions tests required by § 93.119 must be satisfied for a NAAQS if neither paragraph (c)(1) nor paragraph (c)(2) of this section applies for such NAAQS.

(4) An ozone nonattainment area must satisfy the interim emissions test for NO<sub>x</sub>, as required by § 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that does not include a motor vehicle emis-

sions budget for NO<sub>x</sub>. The implementation plan for an ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling on future NO<sub>x</sub> emissions, and the NO<sub>x</sub> motor vehicle emissions budget is a net reduction from NO<sub>x</sub> emissions levels in the SIP's baseline year.

(5) Notwithstanding paragraphs (c)(1), (c)(2), and (c)(3) of this section, nonattainment areas with clean data for a NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for that NAAQS must satisfy one of the following requirements:

(i) The budget test and/or interim emissions tests as required by §§ 93.118 and 93.119 as described in paragraphs (c)(2) and (c)(3) of this section;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the NAAQS for which the area is designated nonattainment (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions in the most recent year of attainment as motor vehicle emissions budgets, if the state or local air quality agency requests that the motor vehicle emissions in the most recent year of attainment be used as budgets, and EPA approves the request in the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment.

(6) For the PM<sub>10</sub> NAAQS only, the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made if the submitted implementation plan revision for a PM<sub>10</sub> nonattainment area is a demonstration of impracticability under CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(d) *Hot-spot conformity test requirements for CO, PM<sub>2.5</sub>, and PM<sub>10</sub> nonattainment and maintenance areas.* This provision applies in accordance with § 93.102(d) for a NAAQS and until the effective date of any revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, project-level conformity determinations in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> nonattainment and maintenance areas must include a demonstration that the hot-spot tests for the applicable NAAQS are satisfied as described in the following:

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot-spot test required by § 93.116(a) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot-spot test required by § 93.116(b).

(2) FHWA/FTA projects in PM<sub>10</sub> nonattainment or maintenance areas must satisfy the appropriate hot-spot test as required by § 93.116(a).

(3) FHWA/FTA projects in PM<sub>2.5</sub> nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by § 93.116(a).

(e) *Areas with limited maintenance plans.* Notwithstanding the other paragraphs of this section, an area is not required to satisfy the regional emissions analysis for § 93.118 and/or § 93.119 for a given pollutant and NAAQS, if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in table 1 of paragraph (b) of this section is still required, including the hot-spot requirements for projects in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> areas.

(f) *Areas with insignificant motor vehicle emissions.* Notwithstanding the other paragraphs in this section, an area is not required to satisfy a regional emissions analysis for § 93.118 and/or § 93.119 for a given pollutant/precursor and NAAQS, if EPA finds

through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in table 1 of paragraph (b) of this section is still required, including regional emissions analyses for § 93.118 and/or § 93.119 for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> areas in § 93.116 must also be satisfied, unless EPA determines that the SIP also demonstrates that projects will not create new localized violations and/or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this paragraph would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

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

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of §§ 93.110, 93.111, 93.112, 93.113(d), 93.116,

## Environmental Protection Agency

## § 93.110

and 93.117. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of § 93.116(b) (“Localized CO, PM<sub>10</sub>, and PM<sub>2.5</sub> violations (hot spots)”).

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in paragraph (c) of this section, with the following modifications:

(i) When the requirements of §§ 93.106(d), 93.116, 93.118, and 93.119 apply to isolated rural nonattainment and maintenance areas, references to “transportation plan” or “TIP” should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area. When the requirements of § 93.106(d) apply to isolated rural nonattainment and maintenance areas, references to “MPO” should be taken to mean the state department of transportation.

(ii) In isolated rural nonattainment and maintenance areas that are subject to § 93.118, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(A) § 93.118;

(B) § 93.119 (including regional emissions analysis for NO<sub>x</sub> in all ozone nonattainment and maintenance areas, notwithstanding § 93.119(f)(2)); or

(C) As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or

delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

(iii) The choice of requirements in paragraph (g)(2)(ii) of this section and the methodology used to meet the requirements of paragraph (g)(2)(ii)(C) of this section must be determined through the interagency consultation process required in § 93.105(c)(1)(vi) through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in § 93.105(d), which applies for any State air agency comments on a conformity determination.

[62 FR 43801, Aug. 15, 1997, as amended at 69 FR 40093, July 1, 2004; 71 FR 12510, Mar. 10, 2006; 73 FR 4440, Jan. 24, 2008; 75 FR 14284, Mar. 24, 2010; 77 FR 14986, Mar. 14, 2012]

### § 93.110 Criteria and procedures: Latest planning assumptions.

(a) Except as provided in this paragraph, the conformity determination, with respect to all other applicable criteria in §§ 93.111 through 93.119, must be based upon the most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required in § 93.105(c)(1)(i). The “time the conformity analysis begins” for a transportation plan or TIP determination is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel and/or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination