the criteria and procedures of §§93.109 through 93.119.

(d) Timeframe of conformity determination. (1) Unless an election is made under paragraph (d)(2) or (d)(3) of this section, the timeframe of the conformity determination must be through the last year of the transportation plan’s forecast period.

(2) For areas that do not have an adequate or approved CAA section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the transportation plan and TIP conformity determination, after consultation with 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.


§ 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. Paragraphs (c) through (k) of this section explain when the budget, interim emissions, and hot-spot tests are required for each pollutant and NAAQS. Paragraph (l) of this section addresses conformity requirements for areas with approved or adequate limited maintenance plans. Paragraph (m) of this section addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Paragraph (n) of this section addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

<table>
<thead>
<tr>
<th>TABLE 1—CONFORMITY CRITERIA</th>
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<tr>
<td>All Actions at all times:</td>
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<td>§ 93.110</td>
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<td>§ 93.112</td>
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<td>Transportation Plan:</td>
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<td>§ 93.113(b)</td>
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<td>§ 93.118 or § 93.119</td>
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<td>TIP:</td>
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<td>§ 93.113(c)</td>
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<td>§ 93.118 or § 93.119</td>
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<td>Project (From a Conforming Plan and TIP):</td>
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<td>§ 93.116</td>
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<td>Project (Not From a Conforming Plan and TIP):</td>
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<td>§ 93.113(d)</td>
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<td>§ 93.117</td>
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<td>§ 93.118 and/or § 93.119</td>
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(c) 1-hour ozone NAAQS nonattainment and maintenance areas. This paragraph applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e., until the effective date of any revocation of the 1-hour ozone 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 ozone 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 1-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations 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 maintenance plan for the 1-hour ozone 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) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests must be satisfied as required by §93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 1-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS.

(3) An ozone nonattainment area must satisfy the interim emissions test for NOX, as required by §93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NOX. The implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NOX if the implementation plan or plan submission contains an explicit NOX motor vehicle emissions budget that is intended to act as a ceiling on future NOX emissions, and the NOX motor vehicle emissions budget is a net reduction from NOX emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan
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and that are not required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually marginal and below areas) must satisfy one of the following requirements:

(i) The interim emissions tests required by §93.119; or

(ii) The State shall submit to EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by §93.118 must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (c)(1) of this section).

(5) Notwithstanding paragraphs (c)(1) and (c)(2) of this section, moderate and above ozone nonattainment areas with three years of clean data for the 1-hour ozone 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 the 1-hour ozone NAAQS must satisfy one of the following requirements:

(i) The interim emissions tests as required by §93.119;

(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 1-hour ozone NAAQS (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by §93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 1-hour ozone NAAQS.

(d) 8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area. This paragraph applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS and areas that were designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. This paragraph applies 1 year after the effective date of EPA’s nonattainment designation for the 8-hour ozone NAAQS for an area, according to §93.102(d). 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 8-hour ozone 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 such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations 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 maintenance plan for the 8-hour ozone 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) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, part D, subpart 1 areas), the interim emissions tests must be satisfied as required by §93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NOX, 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 addresses reasonable further progress that does not include a motor vehicle emissions budget for NO\textsubscript{X}. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO\textsubscript{X} if the implementation plan or plan submission contains an explicit NO\textsubscript{X} motor vehicle emissions budget that is intended to act as a ceiling on future NO\textsubscript{X} emissions, and the NO\textsubscript{X} motor vehicle emissions budget is a net reduction from NO\textsubscript{X} emissions levels in 2002.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually marginal and certain Clean Air Act, part D, subpart 1 areas) must satisfy one of the following requirements:

(i) The interim emissions tests required by §93.119; or

(ii) The State shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by §93.118 must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (d)(1) of this section).

(5) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, ozone nonattainment areas with three years of clean data for the 8-hour ozone 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 the 8-hour ozone NAAQS must satisfy one of the following requirements:

(i) The interim emissions tests as required by §93.119; or

(ii) The budget test as required by §93.118, using the adequate or approved motor vehicle emissions budget(s) in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS (subject to the timing requirements of paragraph (d)(1) of this section); or

(iii) The budget test as required by §93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

(e) 8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area. This provision applies 1 year after the effective date of EPA’s nonattainment designation for the 8-hour ozone NAAQS for an area, according to §93.102(d). 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 8-hour ozone 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 such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations 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 maintenance plan for the 8-hour ozone 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 (e)(1) of this section applying, the following test(s) must be satisfied:

(i) If the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by §93.118 using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission;
(ii) If the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by §93.118 for either:

(A) The 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by §93.105; or

(B) The 1-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission. If additional emissions reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions must come from within the 8-hour nonattainment area;

(iii) If the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the entire 1-hour ozone nonattainment or maintenance area(s):

(A) The budget test as required by §93.118 for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; and

(B) The interim emissions tests as required by §93.119, when applicable, for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state 1-hour nonattainment or maintenance area.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO\(_X\), as required by §93.119, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO\(_X\). The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO\(_X\) if the implementation plan or plan submission contains an explicit NO\(_X\) motor vehicle emissions budget that is intended to act as a ceiling on future NO\(_X\) emissions, and the NO\(_X\) motor vehicle emissions budget is a net reduction from NO\(_X\) emissions levels in 2002. Prior to an adequate or approved NO\(_X\) motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO\(_X\) if the implementation plan contains an explicit NO\(_X\) motor vehicle emissions budget that is intended to act as a ceiling on future NO\(_X\) emissions, and the NO\(_X\) motor vehicle emissions budget is a net reduction from NO\(_X\) emissions levels in 1990.
(4) Notwithstanding paragraphs (e)(1) and (e)(2) of this section, ozone non-
attainment areas with three years of clean data for the 8-hour ozone NAAQS
that have not submitted a maintenance plan and that EPA has determined are
not subject to the Clean Air Act reasonabe further progress and attain-
ment demonstration requirements for the 8-hour ozone 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 and as described in paragraph (e)(2) 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 8-hour ozone NAAQS (subject to the timing
requirements of paragraph (e)(1) of this section); or

(iii) The budget test as required by §93.118, using the motor vehicle emis-
sions of ozone precursors in the most recent year of clean data as motor ve-
hicle emissions budgets, if such budgets are established by the EPA rule-
making that determines that the area has clean data for the 8-hour ozone
NAAQS.

(f) CO nonattainment and maintenance areas. In addition to the criteria listed
in Table 1 in paragraph (b) of this section that are required to be satisfied at
all times, in CO nonattainment and maintenance areas conformity deter-
minations must include a demonstration that the hot-spot, budget and/or
interim emissions tests are satisfied as described in the following:

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

(2) In CO nonattainment and mainte-
nance areas the budget test must be satisfied as required by §93.118 for con-
formity determinations made on or after:

(i) The effective date of EPA’s find-
ing that a motor vehicle emissions
budget in a submitted control strategy
implementation plan revision or main-
tenance plan is adequate for transpor-
tation conformity purposes;

(ii) The publication date of EPA’s ap-
proval of such a budget in the FEDER-AL
REGISTER; or

(iii) The effective date of EPA’s ap-
proval of such a budget in the FEDER-AL
REGISTER, if such approval is com-
pleted through direct final rulemaking.

(3) Except as provided in paragraph
(f)(4) of this section, in CO nonattain-
ment areas the interim emissions tests
must be satisfied as required by §93.119
for conformity determinations made
when there is no approved motor vehi-
cle emissions budget from an applica-
ble implementation plan and no ade-
quate motor vehicle emissions budget
from a submitted control strategy im-
plementation plan revision or mainte-
nance plan.

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

(i) The interim emissions tests re-
quired by §93.119; or

(ii) The State shall submit to EPA an
implementation plan revision that con-
tains motor vehicle emissions budg-
et(s) and an attainment demonstration,
and the budget test required by §93.118
must be satisfied using the adequate or
approved motor vehicle emissions
budget(s) (as described in paragraph
(f)(2) of this section).

(g) PM$_{10}$ nonattainment and mainte-
nance areas. In addition to the criteria
listed in Table 1 in paragraph (b) of this
section that are required to be satisfied at
all times, in PM$_{10}$ nonattain-
ment and maintenance areas con-
formity determinations must include a
demonstration that the hot-spot, budg-
et and/or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in PM$_{10}$ non-
attainment or maintenance areas must satisfy the hot spot test required by
§93.116(a).

(2) In PM$_{10}$ nonattainment and mainte-
nance areas where a budget is sub-
mitted for the 24-hour PM$_{10}$ NAAQS,
the budget test must be satisfied as required by §93.118 for conformity determinations 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 maintenance plan 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) In NO\textsubscript{2} nonattainment areas the interim emissions tests must be satisfied as required by §93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(i) 1997 PM\textsubscript{2.5} NAAQS nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such 1997 PM\textsubscript{2.5} 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) FHWA/FTA projects in such 1997 PM\textsubscript{2.5} nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by §93.116(a).

(2) In such 1997 PM\textsubscript{2.5} nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations 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 maintenance plan 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.

(3) In such 1997 PM\textsubscript{2.5} nonattainment areas the interim emissions tests must be satisfied as required by §93.119 for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable

(h) NO\textsubscript{2} nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in NO\textsubscript{2} 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:

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

(3) In such 1997 PM\textsubscript{2.5} nonattainment areas the interim emissions tests must be satisfied as required by §93.119 for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable
implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(j) 2006 PM\textsubscript{2.5} NAAQS nonattainment and maintenance areas without 1997 PM\textsubscript{2.5} NAAQS motor vehicle emissions budgets for any portion of the 2006 PM\textsubscript{2.5} NAAQS 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 2006 PM\textsubscript{2.5} 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) FHWA/FTA projects in such PM\textsubscript{2.5} nonattainment and maintenance areas must satisfy the appropriate hot-spot test required by §93.116(a).

(2) In such PM\textsubscript{2.5} nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations 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 maintenance plan for the 2006 PM\textsubscript{2.5} NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA’s approval of such a budget in the \textit{Federal Register}; or

(iii) The effective date of EPA’s approval of such a budget in the \textit{Federal Register}, if such approval is completed through direct final rulemaking.

(3) Prior to paragraph (k)(2) of this section applying, the following test(s) must be satisfied:

(i) If the 2006 PM\textsubscript{2.5} nonattainment area covers the same geographic area as the 1997 PM\textsubscript{2.5} nonattainment or maintenance area(s), the budget test as required by §93.118 using the approved or adequate motor vehicle emissions budgets in the 1997 PM\textsubscript{2.5} applicable implementation plan or implementation plan submission;

(ii) If the 2006 PM\textsubscript{2.5} nonattainment area covers a smaller geographic area within the 1997 PM\textsubscript{2.5} nonattainment or maintenance area(s), the budget test as required by §93.118 for either:

(A) The 2006 PM\textsubscript{2.5} nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1997 PM\textsubscript{2.5} applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by §83.105; or

(B) The 1997 PM\textsubscript{2.5} nonattainment area using the approved or adequate

(k) 2006 PM\textsubscript{2.5} NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1997 PM\textsubscript{2.5} NAAQS that cover all or a portion of the 2006 PM\textsubscript{2.5} nonattainment 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 2006 PM\textsubscript{2.5} 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) FHWA/FTA projects in such PM\textsubscript{2.5} nonattainment and maintenance areas must satisfy the appropriate hot-spot test required by §93.116(a).

(2) In such PM\textsubscript{2.5} nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations 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 maintenance plan for the 2006 PM\textsubscript{2.5} NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA’s approval of such a budget in the \textit{Federal Register}; or

(iii) The effective date of EPA’s approval of such a budget in the \textit{Federal Register}, if such approval is completed through direct final rulemaking.

(3) Prior to paragraph (k)(2) of this section applying, the following test(s) must be satisfied:

(i) If the 2006 PM\textsubscript{2.5} nonattainment area covers the same geographic area as the 1997 PM\textsubscript{2.5} nonattainment or maintenance area(s), the budget test as required by §93.118 using the approved or adequate motor vehicle emissions budgets in the 1997 PM\textsubscript{2.5} applicable implementation plan or implementation plan submission;

(ii) If the 2006 PM\textsubscript{2.5} nonattainment area covers a smaller geographic area within the 1997 PM\textsubscript{2.5} nonattainment or maintenance area(s), the budget test as required by §93.118 for either:

(A) The 2006 PM\textsubscript{2.5} nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1997 PM\textsubscript{2.5} applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by §83.105; or

(B) The 1997 PM\textsubscript{2.5} nonattainment area using the approved or adequate
motor vehicle emissions budgets in the 1997 PM$_{2.5}$ applicable implementation plan or implementation plan submission. If additional emissions reductions are necessary to meet the budget test for the 2006 PM$_{2.5}$ NAAQS in such cases, these emissions reductions must come from within the 2006 PM$_{2.5}$ nonattainment area:

(iii) If the 2006 PM$_{2.5}$ nonattainment area covers a larger geographic area and encompasses the entire 1997 PM$_{2.5}$ nonattainment or maintenance area(s):

(A) The budget test as required by §93.118 for the portion of the 2006 PM$_{2.5}$ nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1997 PM$_{2.5}$ applicable implementation plan or implementation plan submission; and the interim emissions tests as required by §93.119 for either: the portion of the 2006 PM$_{2.5}$ nonattainment area not covered by the approved or adequate budgets in the 1997 PM$_{2.5}$ nonattainment area, or the entire portion of the 2006 PM$_{2.5}$ nonattainment area, or the entire portion of the 2006 PM$_{2.5}$ nonattainment area within an individual state, in the case where separate 1997 PM$_{2.5}$ SIP budgets are established for each state in a multi-state 1997 PM$_{2.5}$ nonattainment or maintenance area;

(B) The budget test as required by §93.118 for the portion of the 2006 PM$_{2.5}$ nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1997 PM$_{2.5}$ applicable implementation plan or implementation plan submission.

(iv) If the 2006 PM$_{2.5}$ nonattainment area partially covers a 1997 PM$_{2.5}$ nonattainment or maintenance area(s):

(A) The budget test as required by §93.118 for the portion of the 2006 PM$_{2.5}$ nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1997 PM$_{2.5}$ applicable implementation plan or implementation plan submission 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 2006 PM$_{2.5}$ nonattainment area not covered by the approved or adequate budgets in the 1997 PM$_{2.5}$ implementation plan, the entire 2006 PM$_{2.5}$ nonattainment area, or the entire portion of the 2006 PM$_{2.5}$ nonattainment area within an individual state, in the case where separate 1997 PM$_{2.5}$ SIP budgets are established for each state in a multi-state 1997 PM$_{2.5}$ nonattainment or maintenance area.

(l) 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$_{10}$, and PM$_{2.5}$ areas.

(m) 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
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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_{10}, and PM_{2.5} areas in §93.116 must also be satisfied, unless EPA determines that the SIP also demonstrates that the 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.

(n) 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, 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_{10}, and PM_{2.5} violations (hot spots”).

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in paragraphs (c) through (m) 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 state-wide transportation plan or state-wide 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_{x} 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 area; 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 (n)(2)(ii) of this section and the methodology used to meet the requirements of paragraph (n)(2)(ii)(C) of this section must be determined through the interagency consultation process required in §93.105(c)(1)(vii) through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in §93.105(d), which
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§ 93.111 Criteria and procedures: Latest emissions model.

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

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

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

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

(c) Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the FEDERAL REGISTER notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the FEDERAL REGISTER notice of availability, and if...