

been included in a regional emissions analysis that meets applicable §§ 93.118 and/or 93.119 requirements. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

(b) This paragraph applies for CO nonattainment areas as described in § 93.109(f)(1). Each FHWA/FTA project must 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 is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

[69 FR 40077, July 1, 2004, as amended at 71 FR 12510, Mar. 10, 2006; 73 FR 4440, Jan. 24, 2008; 75 FR 14285, Mar. 24, 2010]

**§ 93.117 Criteria and procedures: Compliance with PM<sub>10</sub> and PM<sub>2.5</sub> control measures.**

The FHWA/FTA project must comply with any PM<sub>10</sub> and PM<sub>2.5</sub> control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM<sub>10</sub> and PM<sub>2.5</sub> emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

[69 FR 40078, July 1, 2004]

**§ 93.118 Criteria and procedures: Motor vehicle emissions budget.**

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies

as described in § 93.109(c) through (n). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in paragraph (c) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the timeframe of the transportation plan and conformity determination), for the last year of the timeframe of the conformity determination (as described under § 93.106(d)), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

(1) Until a maintenance plan is submitted:

(i) Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

(ii) Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan has been submitted:

(i) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than

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the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by § 93.105 shall determine what must be considered in order to make such a finding;

(ii) For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;

(iii) If an approved and/or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

(iv) For any analysis years before the last year of the maintenance plan, emissions must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

(c) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in § 93.102(b) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(d) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including 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.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of §§ 93.122 and 93.105(c)(1)(i).

(2) The regional emissions analysis may be performed for any years in the timeframe of the conformity determination (as described under § 93.106(d)) provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan and conformity determination) and the last year of the timeframe of the conformity determination. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in paragraph (b) of this section, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(3) When the timeframe of the conformity determination is shortened under § 93.106(d)(2), 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).

(e) *Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.* (1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, and the adequacy finding is effective. However, motor vehicle emissions budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

(2) The emissions predicted in the "Action" scenario are not greater than:

(i) 2002 emissions, in areas designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS; or

(ii) Emissions in the most recent year for which EPA's Air Emissions Reporting Requirements (40 CFR part 51, subpart A) requires submission of on-road mobile source emissions inventories, as of the effective date of non-attainment designations for any PM<sub>2.5</sub> NAAQS other than the 1997 PM<sub>2.5</sub> NAAQS.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy §§93.114 and 93.115, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(i) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing;

(ii) Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(iii) The motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(iv) The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

(v) The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(vi) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see §93.101 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the State's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the State indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

(f) *Adequacy review process for implementation plan submissions.* EPA will use the procedure listed in paragraph (f)(1) or (f)(2) of this section to review the adequacy of an implementation plan submission:

(1) When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan,

(i) EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy.

(ii) The public will have a minimum of 30 days to comment on the adequacy of the implementation plan submission. If the complete implementation plan is not accessible electronically through the internet and a copy is requested within 15 days of the date of the website notice, the comment period will be extended for 30 days from the date that a copy of the implementation plan is mailed.

(iii) After the public comment period closes, EPA will inform the State in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the State process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under paragraph (f)(2)(iii) of this section.

(iv) EPA will publish a FEDERAL REGISTER notice to inform the public of EPA's finding. If EPA finds the submission adequate, the effective date of this finding will be 15 days from the date the notice is published as established in the FEDERAL REGISTER notice, unless EPA is taking a final approval action on the SIP as described in paragraph (f)(2)(iii) of this section.

(v) EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on EPA's website. The website will also include EPA's response to comments if any comments were received during the public comment period.

(vi) If after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in paragraphs (f)(1)(i) through (v) or (f)(2) of this section unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission. In all cases where EPA reverses its previous finding to a finding of inadequacy under

paragraph (f)(1) of this section, such a finding will become effective immediately upon the date of EPA's letter to the State.

(vii) If after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in paragraphs (f)(1)(i) through (v) or (f)(2) of this section.

(2) When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan,

(i) EPA's FEDERAL REGISTER notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy.

(ii) The publication of the notice of proposed rulemaking will start a public comment period of at least 30 days.

(iii) EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in paragraphs (f)(1)(iii) through (v) of this section. If EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the FEDERAL REGISTER, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking. EPA will respond to comments received directly and review comments submitted through the State process and include the response to comments in the applicable docket.

[62 FR 43801, Aug. 15, 1997, as amended at 69 FR 40078, July 1, 2004; 73 FR 4440, Jan. 24, 2008; 75 FR 14285, Mar. 24, 2010]

**§ 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.**

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must satisfy the interim emissions test(s) as described in § 93.109(c) through (n). This criterion applies to the net effect of the action (transportation plan, TIP, or project not from a conforming plan