

RULE 701. TRANSPORTATION CONFORMITY. (Adopted 10/20/1994, revised 10/15/1998)

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§93.100 Purpose.

The purpose of this rule is to implement §176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), 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 United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to §110 and Part D of the CAA.

§93.101 Definitions.

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

APCD means the Santa Barbara County Air Pollution Control District.

Applicable implementation plan is defined in §302(q) of the CAA and means 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 or approved pursuant to regulations promulgated under §301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

Caltrans the California Department of Transportation.

CARB means the California Air Resources Board.

Cause or contribute to a new violation for a project means: (1) To cause or contribute to a new violation of a standard in the area substantially affected by the 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 (2) 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.

CEQA means the California Environmental Quality Act, Public Resources Code section 21000 et seq.

Clean data means air quality monitoring data determined by EPA to meet the requirements of 40 CFR part 58 that indicate attainment of the national ambient air quality standard.

Control strategy implementation plan revision is the implementation plan 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), and 189(b)(1)(A); and §§192(a) and 192(b), for nitrogen dioxide).

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

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this subpart, 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. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) 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 (3) 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 according to §93.106 of this subpart.

Hot-spot analysis is an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. 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.

Lapse means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

Maintenance area means any geographic region of the United States 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 plan means an implementation plan under §175A of the CAA, as amended.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.

Milestone has the meaning given in §182(g)(1) and §189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

National ambient air quality standards (NAAQS) are those standards established pursuant to §109 of the CAA.

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

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

Project means a highway project or transit project.

Protective finding means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Laws 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.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility 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.

Safety margin means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

SBCAG means the Santa Barbara County Association of Governments, the regional transportation planning agency and the metropolitan planning organization for Santa Barbara County.

SIP means the state implementation plan required by Section 110 of the Clean Air Act, as amended.

Standard means a national ambient air quality standard.

Title 23 U.S.C. means title 23 of the United States Code.

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 must be defined inclusively enough to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in §108 of the CAA, or any other measure for 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 for the purposes of this subpart.

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.

Written commitment for the purposes of this subpart means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

§93.102 Applicability.

(a) Action applicability.

(1) Except as provided for in paragraph (c) of this section or §93.126, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, §93.121 applies to such projects if they are regionally significant.

(b) Geographic Applicability. The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(1) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).

(2) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds (VOC) and nitrogen oxides (NO_x) in ozone areas;

(ii) NO_x in NO₂ areas; and

(iii) VOC, NO_x, and PM₁₀ in PM₁₀ areas if 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 PM₁₀ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of this subpart apply to maintenance areas for 20 years from the date EPA approves the area's request under §107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.

(c) Limitations

(1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step (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) occurred. 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 the 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 three years have elapsed since the most recent major step to advance the project occurred.

§93.103 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

§93.104 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 this section and the applicable implementation plan.

(b) Frequency of conformity determinations for transportation plans.

(1) Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must 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 §93.126 or §93.127. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.

(c) Frequency of conformity determinations for transportation improvement programs.

(1) A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A 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 §93.126 or §93.127.

(3) The MPO and DOT must determine the conformity of the TIP no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, the existing conformity determination will lapse.

(4) After an MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in §§93.126 and 93.127. Otherwise, the existing conformity determination for the TIP will lapse.

(d) **Projects.** FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if three years have elapsed since the most recent major step to advance the project (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) occurred.

(e) **Triggers for transportation plan and TIP conformity determinations.** Conformity of existing transportation plans and TIPs must be redetermined within 18 months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

(1) November 24, 1993;

(2) The date of the State's initial submission to EPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget;

(3) EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget;

(4) EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and

(5) EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.

§93.105 Consultation.

(a) General

This section provides procedures for Federal, State, regional and local interagency consultation and the resolution of conflicts. The agencies involved with these procedures are:

Federal: EPA Region 9, Federal Transit Administration Region 9 and Federal Highway Administration Region 9 and California Division;

State: CARB, Caltrans District 5 and Headquarters;

Regional: SBCAG and the APCD

Such consultation procedures shall be undertaken by SBCAG, Caltrans, Federal Transit Administration and Federal Highway Administration with CARB, the APCD and EPA prior to making conformity determinations. Such consultation procedures shall be undertaken by CARB, the APCD and EPA with SBCAG, Caltrans, Federal Transit Administration and the Federal Highway Administration prior to developing any applicable implementation plans required under the Clean Air Act.

(b) Interagency Consultation Procedures: General Factors.

- (1) Representatives of SBCAG, the APCD, CARB and Caltrans shall undertake an interagency consultation process in accordance with this section and with each other and with EPA, Federal Highway Administration and Federal Transit Administration on the development of the implementation plan, the list of transportation control measures in the applicable implementation plan, the transportation plan, the transportation improvement program, any revisions to the preceding documents and all conformity determinations required by this rule.
- (2) The roles and responsibilities of the agencies involved in the consultation process are defined in Table 1.

TABLE 1 - AGENCY ROLES AND RESPONSIBILITIES

AGENCY	ROLES			
	SIP	TRANSPORTATION PLAN	TRANSPORTATION IMPROVEMENT PROGRAM	CONFORMITY
SBCAG	<p>1) Perform transportation modeling, prepare regional analyses and document timely implementation of transportation control measures</p> <p>2) Prepare the transportation control measures portion of SIP submittals pursuant to California Health and Safety Code section 40717.</p> <p>3) Review and comment as appropriate on SIP revisions.</p> <p>4) Provide technical and policy input on SIP emission budgets</p>	<p>1) Develops, coordinates, circulates and adopts the transportation plan, including any necessary technical supporting documents, environmental documents and memoranda.</p> <p>2) Release draft transportation plan for public review prior to any final action by the SBCAG Board</p>	<p>1) Develops, coordinates, circulates and adopts the transportation improvement program, including any necessary technical supporting documents, environmental documents and memoranda.</p> <p>2) Release draft transportation plan for public review prior to any final action by the SBCAG Board</p>	<p>1) Prepare conformity analysis and make conformity findings for the transportation plan and transportation improvement program pursuant to the requirements of 40 CFR 93</p>

TABLE 1 (continued)

AGENCY	ROLES			
	SIP	TRANSPORTATION PLAN	TRANSPORTATION IMPROVEMENT PROGRAM	CONFORMITY
Air Pollution Control District	<p>1) Develop attainment demonstration, maintenance and control strategy SIPs. Prepare draft SIP submittals and revise as necessary, incorporate other agencies' comments and respond to public comment. Participates in any required public workshops and hearing on SIP submittals.</p> <p>2) Pursuant to California Health and Safety Code section 40717, review and approve or disapprove the plan for transportation control measures prepared by SBCAG.</p> <p>3) With input from SBCAG and Caltrans, prepare emissions budgets and incorporate into the SIP.</p> <p>4) Upon notification by EPA, notify SBCAG of the status of pending EPA sanctions, sanction clocks and any changes to such status or sanction clocks.</p>	<p>1) Review and comment as appropriate.</p>	<p>1) Review and comment as appropriate.</p>	<p>1) Review and comment as appropriate.</p>
Local municipalities and Santa Barbara County ¹	<p>1) Review and comment as appropriate.</p> <p>2) Implement, on schedule, transportation control measures for which they have implementation responsibility.</p>	<p>1) Review and comment as appropriate.</p> <p>2) Propose projects for inclusion in the transportation plan.</p>	<p>1) Review and comment as appropriate.</p> <p>2) Propose projects for inclusion in the transportation improvement program.</p>	<p>1) Prepare conformity analysis for projects pursuant to 40 CFR 93.</p> <p>2) Review and comment as appropriate</p>

¹ The Cities of Santa Barbara, Carpinteria, Solvang, Buellton, Lompoc, Guadalupe and Santa Maria and the County of Santa Barbara participate through participation on SBCAG's Board of Directors.

TABLE 1 (continued)

AGENCY	ROLES			
	SIP	TRANSPORTATION PLAN	TRANSPORTATION IMPROVEMENT PROGRAM	CONFORMITY
Caltrans	<p>1) Review and comment as appropriate on SIP revisions.</p> <p>2) Review and consult with CARB on any proposed revision to motor vehicle emission factors.</p> <p>3) Implement transportation control measures for which Caltrans has responsibility.</p>	<p>1) Propose projects for inclusion in the transportation plan.</p> <p>2) Review and comment as appropriate.</p>	<p>1) Propose projects for inclusion in the transportation improvement program.</p> <p>2) Review and comment as appropriate.</p>	<p>1) Prepare project-level conformity analyses for state transportation projects pursuant to the requirements of 40 CRF 93.</p> <p>2) Review and comment as appropriate on conformity analyses and findings.</p> <p>3) Provide technical support to SBCAG for the preparation of emissions analyses for conformity determinations.</p> <p>4) Distribute draft and final project environmental documents.</p>

TABLE 1 (continued)

AGENCY	ROLES			
	SIP	TRANSPORTATION PLAN	TRANSPORTATION IMPROVEMENT PROGRAM	CONFORMITY
CARB	<p>1) Review all draft and final SIP revisions for compliance with applicable requirements.</p> <p>2) Submit SIP revisions to EPA.</p> <p>3) Develop, solicit input on and adopt updated motor vehicle emission factors for use in control strategy SIP development.</p>	<p>1) Review and comment as appropriate.</p>	<p>1) Review and comment as appropriate.</p>	<p>1) Review and comment as appropriate on conformity analyses and findings.</p> <p>2) In consultation with SBCAG, Caltrans and other interested parties conduct research to update motor vehicle emission factors.</p> <p>3) Provide the most recent EPA approved motor vehicle emission factors to SBCAG and Caltrans for use in conformity determination emissions analyses.</p> <p>4) Provide technical support to SBCAG and Caltrans for the preparation of emission analyses in conformity determinations.</p>

TABLE 1 (continued)

AGENCY	ROLES			
	SIP	TRANSPORTATION PLAN	TRANSPORTATION IMPROVEMENT PROGRAM	CONFORMITY
Federal Highway Administration and Federal Transit Administration	<p>1) Review and comment as appropriate.</p> <p>2) Provide guidance on the conformity implications of SIP revisions as appropriate.</p>	<p>1) Review and comment as appropriate.</p>	<p>1) Review and comment as appropriate.</p>	<p>1) Make conformity findings for Federal Highway Administration and Federal Transit Administration projects pursuant to 40 CFR 93</p> <p>2) Make conformity findings for the transportation plan and transportation improvement program prepared by SBCAG.</p> <p>3) Make conformity findings for state transportation projects.</p> <p>4) Through SBCAG and Caltrans, provide notification of conformity findings to other agencies.</p> <p>5) Provide guidance on the conformity and metropolitan transportation planning process.</p>

TABLE 1 (continued)

AGENCY	ROLES			
	SIP	TRANSPORTATION PLAN	TRANSPORTATION IMPROVEMENT PROGRAM	CONFORMITY
EPA	1) Review all SIP revisions for completeness and approvability. 2) Provide guidance on Clean Air Act Amendments.	1) Review and comment as appropriate.	1) Review and comment as appropriate.	1) Review and comment as appropriate on conformity analyses and findings. 2) In cooperation with the Federal Highway Administration and Federal Transit Administration, provide guidance on the federal conformity rule to other agencies. 3) Review and approve updates of motor vehicle emission factors for use in conformity analyses.

(3) The interagency consultation process shall be initiated by any of the following actions:

- (i) Development of the transportation plan or revisions or amendments to the transportation plan.
- (ii) Development of the conformity determination for the transportation plan or revisions or amendments to the transportation plan.
- (iii) Development of the transportation improvement program or revisions or amendments to the transportation improvement program.
- (iv) Development of the conformity determination for the transportation improvement program or revisions or amendments to the transportation improvement program.
- (v) Development of revisions to the SIP which affect transportation or the emissions budget.
- (vi) Development of project-level conformity determinations.
- (vii) Development or revision of conformity procedures and actions required under § 93.105(c).

(4) SBCAG shall initiate the interagency consultation process for all the actions enumerated under § 93.105(b)(3)(i) through (iv) beginning no less than six (6) months prior to the date a final document is required (or when SBCAG begins work on such a document, if later) and continuing on periodically as appropriate. SBCAG shall notify other agencies in the consultation process, host and chair the meetings and provide agendas, minutes and any necessary supporting material for the meetings. SBCAG will prepare draft and final documents associated with § 93.105(b)(3)(i) through (iv) and any necessary supporting material and distribute these documents and material to the agencies in the consultation process. Draft documents and supporting material shall be distributed in a manner so the commenting agencies shall have the time periods specified in § 402(b)(8) in which to review the documents and material.

(i) The consultation meetings on the development of conformity determinations will review the regional conformity assumptions and analysis of the transportation plan or transportation improvement program and shall discuss, at a minimum, the following: modeling assumptions, projects assumed in the network, emission factors used in the conformity analysis, horizon years, implementation of TCM and financial constraints and other federal requirements that affect conformity.

(ii) In addition to the interagency consultation process required by this section, SBCAG will consult with each incorporated city in the County, the County of Santa Barbara and the Santa Barbara Metropolitan Transit District for all the actions enumerated under §93.105(b)(3)(i) through (iv) during a regularly scheduled meeting of SBCAG's Technical Transportation Advisory Committee (TTAC). TTAC is a standing committee which provides professional technical advice and recommendations to the board of directors of SBCAG. Membership of TTAC consists of staff representative from SBCAG, each incorporated city in the County, the County of Santa Barbara, the Santa Barbara Metropolitan Transit District, APCD and Caltrans. SBCAG will prepare and distribute any documents and necessary supporting material associated with § 93.105(b)(3)(i) through (iv) to TTAC members one week prior to the meeting.

(5) The APCD shall initiate the interagency consultation process for all the actions enumerated under § 93.105(b)(3)(v) beginning no less than six (6) months prior to the date a final document is required (or when the APCD begins work on such a document, if later) and continuing on periodically as appropriate. The APCD shall notify other participants in the consultation process, host and chair the meetings and provide agendas, minutes and any necessary supporting material for the meetings. The APCD will prepare draft and final documents associated with § 93.105(b)(3)(v) and any necessary supporting material and distribute these documents and material to the agencies in the consultation process. Draft documents and supporting material shall be distributed in a manner so the commenting agencies shall have the time periods specified in § 93.105(b)(8) in which to review the documents and material.

(i) In addition to the interagency consultation process required by this section, APCD will consult with each incorporated city in the County, the County of Santa Barbara and the Santa Barbara Metropolitan Transit District for all the actions enumerated under §93.105(b)(3)(v) during a regularly scheduled meeting of SBCAG's Technical Transportation Advisory Committee (TTAC). APCD will prepare and distribute any documents and necessary supporting material associated with § 93.105(b)(3)(v) to TTAC members one week prior to the meeting.

(6) The sponsor of any transportation project subject to this rule shall initiate the interagency consultation process for the actions enumerated under § 93.105(b)(3)(vi) beginning no less than six (6) months prior to the date a final document is required (or the date on which the project sponsor begins work on such a document, if later) and continuing on periodically as appropriate. Any consultation meeting on the development of project-level conformity determinations shall discuss, at a minimum, the following: modeling assumptions, projects assumed in the network, emission factors used in the conformity analysis, horizon years, implementation of TCM and financial constraints and other federal requirements that affect conformity. The project sponsor shall notify other participants in the consultation process, host and chair the meetings and provide agendas, minutes and any necessary supporting material for the meetings. The project sponsor will prepare draft and final documents associated with § 93.105(b)(3)(vi) and any necessary supporting material and distribute these documents and material to the agencies in the consultation process. Draft documents and supporting material shall be distributed in a manner so the commenting agencies shall have the time periods specified in § 93.105(b)(8) in which to review the documents and material.

(7) As specified in § 93.105(c), either SBCAG or the APCD may initiate the interagency consultation process for the actions enumerated under § 93.105(b)(3)(vii). Meetings shall be held at regular, scheduled intervals if determined necessary by the agency initiating the consultation process but no less frequently than annually. The agency initiating the consultation process shall notify the agencies identified in §93.105(a), host and chair the meetings and provide agendas, minutes and any necessary supporting material for the meetings and distribute any draft and final documents associated with § 93.105(b)(3)(vii) activities to the agencies in the consultation process. Draft documents and supporting material shall be distributed in a manner so the commenting agencies shall have the time periods specified in § 93.105(b)(8) in which to review the documents and material.

(8) Prior to the approval of any new, revised or amended transportation plan, transportation improvement program, conformity determination or SIP, the agency responsible for preparation of such action shall provide the following review periods, as applicable, for the review of the draft plan, program, determination or SIP and any supporting documentation. Comments shall be provided in writing and may be submitted on or before the final day of each applicable review period.

(i) Transportation plans, conformity determinations for transportation plans and conformity determinations for amendments to transportation plans: 30 days.

(ii) Transportation improvement programs, conformity determinations for transportation improvement programs and conformity determinations for amendments to transportation improvement programs: 30 days.

(iii) Amendments to the transportation plan and transportation improvement program: 14 days.

(iv) Amendments to the transportation plan and transportation improvement program which only add or delete exempt projects: 7 days.

(v) Project-level conformity determinations: 20 days.

(vi) SIP revisions: 45 days.

(vii) Activities specified under § 93.105(c): 14 days.

(viii) Notwithstanding the requirements of § 93.105(b)(8)(i) through (vii), any conformity determination prepared as part of the documentation required under the National Environmental Policy Act (NEPA), the review period for submitting written comments to the draft document and supporting material shall be extended to the review period specified for the documentation required under NEPA.

(9) (i) SBCAG shall provide a written response to all substantive written comments submitted from any commenting agency during the comment period specified in § 93.105(b)(8). Such written responses shall be documented in the transportation plan, transportation improvement program or conformity determination adopted by the SBCAG Board of Directors and made part of the record of decision.

(ii) The APCD shall provide a written response to all substantive written comments submitted from any commenting agency during the comment period specified in § 93.105(b)(8). Such written responses shall be documented in the SIP revision adopted by the APCD Board and made part of the record of decision.

(iii) The sponsor of any transportation project subject to this rule shall provide a written response to all substantive comments submitted from any commenting agency during the comment period specified in § 93.105(b)(8). Such written responses shall be documented in the conformity determination made by the Federal Highway Administration/Federal Transit Administration and made part of the record of decision.

(iv) Prior to making any final decision or determination for any activity specified in § 93.105(c), the agency responsible for initiating the consultation process shall provide a written response to all substantive written comments submitted from any commenting agency during the comment period specified in § 93.105(b)(8).

(10) Each agency identified under § 93.105(a) involved with the development of transportation control measures shall be provided the opportunity to receive draft documents and supporting material and provide comments, to meet with other involved agencies and to receive written responses to substantive comments, all as specified in §93.105(b).

(11) Any agency identified under §93.105(a) can request a consultation meeting with the other agencies identified under §93.105(a).

(12) If FHWA/FTA intends on making a conformity determination using different criteria or information than was used by SBCAG in making its conformity finding, then FHWA/FTA will consult with the agencies identified under §93.105(a) prior to making its conformity determination.

(13) In addition to the interagency consultation processes required by this section, SBCAG, APCD and Caltrans will hold bi-monthly meetings to exchange information relevant to the development of the transportation plan, TIP, conformity analyses and SIP. SBCAG will distribute the meeting agenda and prepare meeting notes.

(c) Interagency consultation procedures: Specific processes.

(1) An interagency consultation process in accordance with § 93.105(b) involving SBCAG, the APCD, the Local Agencies, CARB, Caltrans, EPA, Federal Highway Administration and Federal Transit Administration shall be undertaken for the following:

(i) Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses, including vehicle miles traveled forecasting, to be initiated by SBCAG and conducted in accordance with § 93.105(b);

(ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those facilities

functionally classified as principal arterial or higher, fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or transportation improvement program, to be initiated by SBCAG or the APCD and conducted in accordance with § 93.105(b);

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this rule (see § 93.126 and § 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by SBCAG or the APCD and conducted in accordance with § 93.105(b);

(iv) Making a determination, as required by § 93.113(c)(1), whether past obstacles to implementation of transportation control measures which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for transportation control measures are giving maximum priority to approval or funding for transportation control measures, to be initiated by SBCAG or the APCD and conducted in accordance with § 93.105(b). This consultation process shall also consider whether delays in transportation control measure implementation necessitate revisions to the applicable implementation plan to remove or substitute transportation control measures or other emission reduction measures;

(v) Identifying, as required by § 93.123(b), projects located at sites in PM₁₀ nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ hot-spot analysis, to be initiated by SBCAG or the APCD and conducted in accordance with § 93.105(b);

(vi) Notification of revisions or amendments to transportation plans or transportation improvement programs which merely add or delete exempt projects listed in § 93.126 or § 93.127, to be initiated by SBCAG and conducted in accordance with § 93.105(b); and

(vii) Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by § 93.109(g)(2)(iii).

(2) An interagency consultation process in accordance with § 93.105(b) involving SBCAG, the APCD, CARB and Caltrans, shall be undertaken for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 93.104, to be initiated by SBCAG; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins, to be initiated by SBCAG.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with § 93.105(b) involving SBCAG and Caltrans shall be undertaken by SBCAG for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.

(4) (i) An interagency consultation process in accordance with § 93.105(b) involving SBCAG, the APCD, CARB and Caltrans and recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken by SBCAG to assure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act are disclosed to SBCAG on a regular basis, and to assure that any changes to those plans are immediately disclosed.

(ii) The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding or otherwise, shall disclose such project to SBCAG in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of regionally significant project.

(iii) In the case of any such regionally significant project that has not been disclosed to SBCAG and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming transportation improvement program's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of § 93.121.

(iv) For the purposes of this section and § 93.121, the phrase "adopt or approve of a regionally significant project" means the first time any action necessary to authorizing a project occurs, including any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from SBCAG that the project may be adopted or approved.

(5) An interagency consultation process in accordance with § 93.105(b) involving SBCAG and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to SBCAG as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 93.122, to be initiated by SBCAG and conducted in accordance with § 93.105(b).

(6) An interagency consultation process in accordance with § 93.105(b) involving SBCAG, the APCD, CARB and Caltrans shall be undertaken for the design, schedule, and funding of research and data collection efforts and regional transportation model development by SBCAG or the APCD (e.g., household/ travel transportation surveys), to be initiated by SBCAG or the APCD.

(d) Resolving Conflicts.

(1) Conflicts between State agencies, SBCAG or the APCD that arise during consultation will be resolved as follows:

(i) Staff of these agencies will meet in an attempt to resolve differences in a manner acceptable to all parties.

(ii) If staff are unsuccessful, the executive directors or heads of the involved agencies shall meet in an attempt to resolve differences in a manner acceptable to all parties.

(2) The APCD may appeal a conformity determination to the Governor within 14 days after the agency which has prepared the proposed conformity determination has taken final action on the conformity determination. If the APCD appeals to the Governor, the final conformity determination must have the concurrence of the Governor. Notice of any appeal under this subsection shall be filed with the agency which has prepared the proposed conformity determination.

(3) The Governor may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the State, but not to the head or staff of ARB, the APCD, Caltrans, a State transportation commission or board, any agency that has responsibility for only one of these functions, or an MPO.

(e) Public Consultation Procedures.

Affected agencies making conformity determinations on transportation plans, transportation improvement programs and projects shall establish and continually implement a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of 23 CFR 450. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95.. In addition, any such agency must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving Federal Highway Administration or Federal Transit Administration funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or transportation improvement program. These agencies shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law.

§93.106 Content of transportation plans.

(a) Transportation plans adopted after January 1, 1997 in serious, severe, or extreme ozone nonattainment areas and in serious CO nonattainment areas. If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart.

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by §93.105;

(ii) 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 effect 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 that are sufficient

for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) **Moderate areas reclassified to serious.** Ozone or CO nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than 200,000 must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) **Transportation plans for other areas.** Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of §§93.109 -93.119.

(d) **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 - 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) The following table indicates the criteria and procedures in §§93.110 - 93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraphs (c) through (f) of this section explain when the budget, emission reduction, and hot spot tests are required for each pollutant. Paragraph (g) of this section addresses isolated rural nonattainment and maintenance areas.

Table 2. Conformity Criteria

ALL ACTIONS AT ALL TIMES

§93.110

Latest planning assumptions

§93.111	Latest emissions model
§93.112	Consultation

TRANSPORTATION PLAN

§93.113(b)	TCMs
§93.118 OR §93.119	Emissions budget OR Emission reduction

TIP

§93.113(c)	TCMs
§93.118 OR §93.119	Emissions budget OR Emission reduction

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	CO and PM ₁₀ hot spots
§93.117	PM ₁₀ control measures

PROJECT (NOT FROM A CONFORMING PLAN AND TIP)

§93.113(d)	TCMs
§93.114	Currently conforming plan and TIP
§93.116	CO and PM ₁₀ hot spots
§93.117	PM ₁₀ control measures
§93.118 OR §93.119	Emissions budget OR Emission reduction

(c) **Ozone nonattainment and maintenance areas.** In addition to the criteria listed in Table 2 that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) In ozone nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision (usually moderate and above areas), the emission reduction tests must be satisfied as required by §93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no

previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(3) An ozone nonattainment area must satisfy the emission reduction test for NO_x, 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 NO_x.

The implementation plan 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 1990.

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

(i) The emission reduction tests required by §93.119; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by §93.118 must be satisfied using the submitted 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 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 must satisfy one of the following requirements:

(i) The emission reduction tests as required by §93.119;

(ii) The budget test as required by §93.118, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (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.

(d) **CO nonattainment and maintenance areas.** In addition to the criteria listed in Table 2 that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(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) In CO nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) Except as provided in paragraph (4) below, in CO nonattainment areas the emission reduction tests must be satisfied as required by §93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(4) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g., moderate 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 emission reduction tests required by §93.119; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by §93.118 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (d)(2) of this section).

(e) **PM₁₀ nonattainment and maintenance areas.** In addition to the criteria listed in Table 2 that are required to be satisfied at all times, in PM₁₀ nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) FHWA/FTA projects in PM₁₀ nonattainment or maintenance areas must satisfy the hot spot test required by §93.116(a).

(2) In PM₁₀ nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) In PM₁₀ nonattainment areas the emission reduction tests must be satisfied as required by §93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes;

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan; or

(iii) If the submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(f) **NO₂ nonattainment and maintenance areas.** In addition to the criteria listed in Table 2 that are required to be satisfied at all times, in NO₂ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) In NO₂ nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In NO₂ nonattainment areas the emission reduction tests must be satisfied as required by §93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(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, 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 and PM₁₀ violations (hot spots)").

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or emission reduction tests as described in paragraphs (c)-(f) of this section, with the following modifications:

(i) When the requirements of §§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.

(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(d)(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)(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 applies for any State air agency comments on a conformity determination.

§93.110 Criteria and procedures: Latest planning assumptions.

- (a) The conformity determination, with respect to all other applicable criteria in §§93.111 - 93.119, must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.
- (b) Assumptions must 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 must also be based on the latest assumptions about current and future background concentrations.
- (c) The conformity determination for each transportation plan and TIP must 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 must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.
- (e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures 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 §93.105.

§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 the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

§93.112 Criteria and procedures: Consultation.

Conformity must be determined according to the consultation procedures in this rule and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450.

§93.113 Criteria and procedures: Timely implementation of TCMs.

(a) The transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(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 which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, 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 the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, 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 intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(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 applicable implementation plan.

§93.114 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

(a) 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 will also lapse if conformity is not determined according to the frequency requirements specified in §93.104.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this subpart are satisfied.

§93.115 Criteria and procedures: Projects from a plan and TIP.

(a) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 2 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section. Special provisions for TCMs in an applicable implementation plan are provided in paragraph (d) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy §93.106 ("Content of transportation plans"), 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 program 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 the project design concept and scope have not changed significantly from those which were described in the TIP; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by §93.125(a) in order for the project to be considered 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.

(d) **TCMs.** This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

§93.116 Criteria and procedures: Localized CO and PM₁₀ violations (hot spots).

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ 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. 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(d)(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 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.

§93.117 Criteria and procedures: Compliance with PM₁₀ control measures.

The FHWA/FTA project must comply with PM₁₀ 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 PM₁₀ emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

§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)-(g). 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 last year of the transportation plan's forecast period, and for any intermediate years 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 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; and

(iii) If an approved 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.

(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 transportation plan 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 the last year of the plan's forecast period. 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.

(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, or beginning 45 days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.

(2) If EPA has declared an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with motor vehicle emissions budgets, the emission reduction tests required by §93.119 must be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than 45 days after its submission to EPA, 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.

§93.119 Criteria and procedures: Emission reductions in areas without motor vehicle emissions budgets.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must contribute to emissions reductions. This criterion applies as described in §93.109(c) - (g). It applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

(b) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of Clean Air Act section 182(b)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of §93.122 and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section:

(1) The emissions predicted in the “Action” scenario are less than the emissions predicted in the “Baseline” scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(2) The emissions predicted in the “Action” scenario are lower than 1990 emissions by any nonzero amount.

(c) This criterion may be met in PM₁₀ and NO₂ nonattainment areas; marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of Clean Air Act section 182(b)(1); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis that satisfies the requirements of §93.122 and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section, one of the following requirements is met:

(1) The emissions predicted in the “Action” scenario are less than the emissions predicted in the “Baseline” scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) The emissions predicted in the “Action” scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990.

(d) **Pollutants.** The regional emissions analysis must be performed for the following pollutants:

(1) VOC in ozone areas;

(2) NO_x in ozone areas, unless the EPA Administrator determines that additional reductions of NO_x would not contribute to attainment;

(3) CO in CO areas;

(4) PM₁₀ in PM₁₀ areas;

(5) Transportation-related precursors of PM₁₀ in PM₁₀ nonattainment and maintenance 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 area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT; and

(6) NO_x in NO₂ areas.

(e) **Analysis years.** The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of transportation plan’s forecast period must also be an analysis year.

(f) **“Baseline” scenario.** The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the “Baseline” scenario in each analysis year. The “Baseline” scenario must be defined for each of the analysis years. The “Baseline” scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in §93.126 and projects exempt from regional emissions analysis as listed in §93.127 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 year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

(g) **“Action” scenario.** The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the “Action” scenario in each analysis year. The “Action” scenario must be defined for each of the analysis years. The “Action” scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The “Action” scenario must include the following (except that exempt projects listed in §93.126 and projects exempt from regional emissions analysis as listed in §93.127 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 applicable implementation plan;
- (3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan 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;
- (4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, 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.

(h) **Projects not from a conforming transportation plan and TIP.** For the regional emissions analysis required by paragraphs (b) and (c) of this section, 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 must 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.

§93.120 Consequences of control strategy implementation plan failures.

(a) Disapprovals.

- (1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.
- (2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is

determined. During the first 120 days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to §93.109.

(3) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

(b) **Failure to submit and incompleteness.** In areas where EPA notifies the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under Clean Air Act sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(c) **Federal implementation plans.** If EPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

§93.121 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.

(a) Except as provided in paragraph (b) of this section, no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following paragraphs are met:

(1) The project was included in the first three years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses; or

(2) There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of §§93.118 and/or 93.119 for a project not from a conforming transportation plan and TIP).

(b) In isolated rural nonattainment and maintenance areas subject to §93.109(g), no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following paragraphs are met:

(1) The project was included in the regional emissions analysis supporting the most recent conformity determination for the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

(2) A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements of §§93.118 and/or 93.119 for projects not from a conforming transportation plan and TIP).

(c) Adopt or approve a regionally significant highway or transit project' shall mean any of the following actions:

- (1) Policy board action or resolution that is necessary for a regionally significant project to proceed.
- (2) Administrative permits issued under the authority of the agency, policy board, or commission for a regionally significant project.
- (3) The execution of a contract to construct, or any final action by an elected or appointed commission or administrator directing or authorizing the commencement of construction of a regionally significant project.
- (4) Providing grants, loans or similar financial support, for the construction of a regionally significant project.
- (5) Participation or membership in an entity, including an authority or special district, that takes any action listed in paragraphs (1) through (4) of this definition."

§93.122 Procedures for determining regional transportation-related emissions.

(a) General requirements.

- (1) The regional emissions analysis required by §§93.118 and 93.119 for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include 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 §93.105. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated 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.
- (2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure 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 regulatory action in order to be implemented may not be included in the emissions analysis unless:
 - (i) The regulatory action is already adopted by the enforcing jurisdiction;
 - (ii) The project, program, or activity is included in the applicable implementation plan;
 - (iii) The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of §93.118 contains a written commitment to the project, program, or activity by the agency with authority to implement it; or
 - (iv) EPA has approved an opt-in to a Federally enforced program, EPA has promulgated the program (if the control program is a Federal responsibility, such as vehicle tailpipe standards), or 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) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

(i) Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.

(ii) Written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and such commitments must be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of §93.119 must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to §93.105(c)(1)(i) to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(b) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of paragraphs (b)(1) through (3) of this section if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by §93.105(c)(1)(i). Network-based travel models must at a minimum satisfy the following requirements:

(i) Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 10 years prior to the date of the conformity determination. Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented;

(ii) Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;

(iii) Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;

(iv) A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

(v) Zone-to-zone travel impedances used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. 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; and

(vi) Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.

(2) Reasonable methods in accordance with good practice must 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-based travel model.

(3) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT 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. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of §93.105(c)(1)(i).

(c) In all areas not otherwise subject to paragraph (b) of this section, regional emissions analyses must use those procedures described in paragraph (b) of this section if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to paragraph (b) of this section may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(d) PM₁₀ from construction-related fugitive dust.

(1) For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM₁₀ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions analysis shall consider construction-related fugitive PM₁₀ and shall account for the level of construction activity, the fugitive PM₁₀ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(e) Reliance on previous regional emissions analysis.

(1) The TIP may be demonstrated to satisfy the requirements of §§93.118 ("Motor vehicle emissions budget") or 93.119 ("Emission reductions in areas without motor vehicle emissions budgets") without new regional emissions analysis if the regional emissions analysis already performed for the plan also applies to the TIP. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

(ii) All TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of §§93.118 or 93.119 without additional regional emissions analysis if 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, and if the project is either:

(i) not regionally significant; or

(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.

§93.123 Procedures for determining localized CO and PM₁₀ concentrations (hot-spot analysis).

(a) CO hot-spot analysis.

(1) The demonstrations required by §93.116 ("Localized CO and PM₁₀ 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 (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2-78-027R). 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.

(b) PM₁₀ hot-spot analysis.

(1) The hot-spot demonstration required by §93.116 must be based on quantitative analysis methods for the following types of projects:

(i) Projects which are located at sites at which violations have been verified by monitoring;

(ii) Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

(iii) New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

(2) Where quantitative analysis methods are not required, the demonstration required by §93.116 may be based on a qualitative consideration of local factors.

(3) The identification of the sites described in paragraph (b)(1)(i) and (ii) of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in §93.105. 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.

(4) The requirements for quantitative analysis contained in paragraph (b) of this section 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) PM₁₀ or CO 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 and PM₁₀ 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.

§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

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) 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 applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

§93.125 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 Laws, FHWA, or FTA must 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 PM₁₀ or CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by §§93.118 ("Motor vehicle emissions budget") and 93.119 ("Emission reductions in areas without motor vehicle emissions budgets") or used in the project-level hot-spot analysis required by §93.116.

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

(c) Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and project sponsors must comply with such commitments.

(d) 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 applicable hot-spot requirements of §93.116, emission budget requirements of §93.118, and emission reduction requirements of §93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under §93.105. The MPO and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of §§93.118 and/or 93.119 and that the project still satisfies the requirements of §93.116, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in §93.105(e) for conformity determinations for projects.

§93.126 Exempt projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from the requirement to determine conformity. 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 3 is not exempt if the MPO in consultation with other agencies (see §93.105(c)(1)(iii)), the EPA, 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 must ensure that exempt projects do not interfere with TCM implementation.

Table 3. - Exempt Projects

SAFETY

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

MASS TRANSIT

Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit vehicles¹.
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 fleet¹.
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

AIR QUALITY

Continuation of ride-sharing and van-pooling promotion activities at current levels.
Bicycle and pedestrian facilities.

OTHER

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.

Emergency or hardship advance land acquisitions (23 CFR 712.204(d)).

Acquisition of scenic easements.

Plantings, landscaping, etc.

Sign removal.

Directional and informational signs.

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.

¹In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

§93.127 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 4 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations must 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 4 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see §93.105(c)(1)(iii)), the EPA, 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 4. - 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.

§93.128 Traffic signal synchronization projects.

Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this subpart. However, all subsequent regional emissions analyses required by §§93.118 and 93.119 for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.

§93.129 Substitution of Transportation Control Measures

In the event that a transportation control measure (TCM) is not included in the regional transportation plan (RTP) or transportation improvement program (TIP) in the time frame contained for that measure in the applicable State Implementation Plan (SIP), the parties in the interagency consultation process established pursuant to §93.105 shall assess whether such measure continues to be appropriate. Where SBCAG and the APCD concur that a transportation control measure identified in the SIP is no longer appropriate, the agencies may initiate the process described below to identify and adopt a substitute control measure.

A substitute control measure must provide for equivalent or greater emissions reductions than the measure contained in the SIP. In addition, a replacement measure must be implemented in the time frame established for the measure contained in the SIP. Where such implementation date has already passed, measures selected pursuant to §93.129 that require transportation funding must be included in the first year of the next TIP and the adopted RTP. The substitute measures must be fully implemented within two years of the implementation date of the original measure in order to be a basis for a finding of timely implementation under §93.113. In order for the APCD to adopt substitute measures under §93.129, there must be evidence of adequate personnel, funding, and authority under State or local law to implement and enforce the measures. Commitments to implement the substitute measures must be made by the agency with legal authority for implementation.

SBCAG will convene a committee (or working group) to identify and evaluate possible substitute measures. The committee shall include members from all affected jurisdictions, state and/or local air quality agencies and local transportation agencies. In addition, the working group shall consult with the Environmental Protection Agency (EPA). Consultation with EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 9.

SBCAG, the APCD and EPA Region 9 must concur with the appropriateness and equivalency of the substitute TCM. All substitute measures must be adopted by the APCD following a public comment period and an EPA 14-day concurrence period as described below. The measure to be replaced shall stay in effect until the substitute measure has been adopted.

The TCM to be replaced must be rescinded for the new measure substituted pursuant to §93.129 to be effective. By adopting a substitution under §93.129, the APCD formally rescinds the previously applicable TCM and adopts the substitute measures.

Prior to adopting a substitute measure under §93.129, the substitute transportation control measure(s) must have been subject to a public hearing and comment process. This means there must be at least one public hearing on the substitution. The hearing can only be held after reasonable public notice, which will include, at least 30 days prior to the hearing:

- notice given to the public by prominent advertising in the area affected announcing the date time and place of the hearing;

- availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply;

- notification to interested parties in accordance with the Administrative Procedures Act;

- notification to the regional offices of the EPA, Federal Highway Administration and Federal Transit Administration;

- notification to the California Air Resources Board and the California Department of Transportation;

- notification to the incorporated cities in Santa Barbara County, Santa Barbara County and the Santa Barbara Metropolitan Transit District.

A description of the measure(s) and analysis supporting the proposal, including assumptions and methodology, must be made available to the public and the parties in the interagency consultation process described in §93.105 within a reasonable time before the public hearing, and at least 30 days prior to the close of the comment period. The APCD shall submit to EPA Region 9 a summary of comments received during the public comment period along with the APCD's responses following the close of the public comment period. EPA shall notify the APCD within 14 days if the agency's concurrence with the substitution has changed as a result of the public comments. Where EPA fails to notify the APCD within 14 days, EPA is deemed to concur.

The analysis of substitute measures under §93.129 must be consistent with the methodology used for evaluating measures in the SIP. Where emissions models and/or transportation models have changed since those used for

purposes of evaluating measures in the maintenance plan, the TCM to be replaced and the substitute measure(s) shall be evaluated using the latest modeling techniques to demonstrate that equivalent or greater emissions reductions will be achieved through implementation of the substitute measure(s).

Key methodologies and assumptions that must be consistent, and reconciled in the event of a discrepancy, are, for example:

- EPA approved regional and hot-spot (for CO and PM-10) emissions models;
- the area's transportation model; and
- population and employment growth projections.

The APCD will maintain documentation of approved TCM substitutions. The documentation will provide a description of the substitution process including the committee or working group members, the public hearing and comment process, EPA's concurrence, and the APCD's adoption. The documentation will be submitted to EPA following adoption of the substitute measure by APCD's Board of Directors and made available to the public as an attachment to the air quality plan.