

Environmental Protection Agency

§ 93.102

obligation under the applicable implementation plan.

[62 FR 43801, Aug. 15, 1997, as amended at 69 FR 40072, July 1, 2004; 71 FR 12510, Mar. 10, 2006; 73 FR 4439, Jan. 24, 2008; 75 FR 14283, Mar. 24, 2010; 77 FR 14986, Mar. 14, 2012]

§ 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 subpart 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), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀); and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}).

(2) The provisions of this subpart also 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;

(iii) VOC and/or NO_x in PM₁₀ areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-re-

lated emissions of one or both of these precursors 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 an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

(iv) NO_x in PM_{2.5} areas, unless both the EPA Regional Administrator and the director of the state air agency have made a finding that transportation-related emissions of NO_x within the nonattainment area are not a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

(v) VOC, sulfur dioxide (SO₂) and/or ammonia (NH₃) in PM_{2.5} areas either if the EPA Regional Administrator or the director of the state air agency has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of this subpart apply to PM_{2.5} nonattainment and maintenance areas with respect to PM_{2.5} from re-entrained road dust if the EPA Regional Administrator or the director of the State air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained

road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

(4) The provisions of this subpart apply to maintenance areas through the last year of a maintenance area's approved CAA section 175A(b) maintenance plan, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.

(c) *Limitations.* In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in § 93.114, except as provided by § 93.114(b).

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM₁₀, PM_{2.5} or NO₂ since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of this subpart shall not apply with respect to that NAAQS for 12 months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

[62 FR 43801, Aug. 15, 1997, as amended at 65 FR 18918, Apr. 10, 2000; 67 FR 50817, Aug. 6, 2002; 69 FR 40072, July 1, 2004; 70 FR 24291, May 6, 2005; 73 FR 4439, Jan. 24, 2008]

§ 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 amendments must be found to conform before the transportation plan amendments are approved by the MPO or accepted by DOT, unless the amendment 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 amendment taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, a 12-month grace period will be implemented as described in paragraph (f) of this section. At the end of this 12-month grace period, 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 (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, a 12-month grace period will be implemented as described in paragraph (f) of this section. At the end of this 12-month grace period, the existing conformity determination will lapse.