

appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) *Public consultation procedures.* Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish 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 450.316(b). Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

EFFECTIVE DATE NOTE: At 69 FR 44073, July 1, 2004, § 93.105 was amended by revising the reference “§ 93.109(g)(2)(iii)” to read “§ 93.109(l)(2)(iii).”, effective Aug. 2, 2004.

§ 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; and

(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

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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 through 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.

EFFECTIVE DATE NOTE: At 69 FR 44073, July 1, 2004, §93.106 was amended by revising paragraph (b), effective Aug. 2, 2004. For the convenience of the user, the revised text is set forth as follows:

§ 93.106 Content of transportation plans.

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(b) *Two-year grace period for transportation plan requirements in certain ozone and CO areas.* The requirements of paragraph (a) of this section apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two years from the following:

(1) The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) The official notice by the Census Bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or,

(3) The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

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

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

§ 93.108 Fiscal constraints for transportation plans and TIPs.

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

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

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

(b) Table 1 in this paragraph indicates the criteria and procedures in §§93.110 through 93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraphs (c) through (f) of this section explain when the