EPA420-F-04-058

Conformity SIP Guidance

Introduction

This document provides guidance on the requirement that states adopt their own criteria and procedures for determining transportation conformity; these state conformity rules are known as "conformity SIPs." Where EPA has approved a state's conformity SIP, the approved conformity SIP governs conformity determinations instead of the federal rule, for those aspects of the rule that it addresses.

EPA recently published a new final rule for transportation conformity on July 1, 2004 (69 FR 40004). This guidance document will help areas that have approved conformity SIPs know which provisions of the July 1, 2004, conformity rule amendments apply immediately in their areas, and which provisions cannot apply until their conformity SIPs are revised. In addition, this guidance document includes questions and answers on other aspects of conformity SIPs.

1. Q. How is this guidance organized?

   A. This document is organized by questions and answers under the following headings:
   - Introduction (Q&A 1 - 4).
   - Applying the July 1, 2004, Transportation Conformity Rule (Q&A 5 - 11). This section includes Q & As that specifically address what aspects of the July 1, 2004, transportation conformity rule (69 FR 40004) apply in areas with and without conformity SIPs, and other questions regarding that rulemaking.
   - New 8-hour Ozone and $PM_{2.5}$ Standards (Q&A 12 & 13). These two questions specifically address areas designated nonattainment under the new air quality standards.
   - General Questions About Conformity SIPs (Q&A 14 - 18). This section includes Q & As about using a Memorandum of Agreement or Memorandum of Understanding for a conformity SIP, incorporating the rule by reference, whether existing conformity SIPs apply to new areas, and which parts of the conformity rule need to be tailored for specific areas.

   This document also includes an appendix:
   - Appendix A is a table that indicates whether a new federal rule provision applies in areas with approved conformity SIPs.

2. Q. Does this guidance create new policy?

   A. No, this guidance does not create new policy, it merely explains the current conformity SIP requirements in the conformity rule at 40 CFR Subpart T, codified at

40 CFR 51.390. This portion of the conformity regulation was published in the August 15, 1997, conformity rule (62 FR 43801). In addition, the July 1, 2004, conformity rule includes a discussion of conformity SIPs, at 69 FR 40068.

3. Q. Who can I contact for additional questions regarding conformity SIPs?

A. If this guidance document does not answer a specific question, please contact the transportation conformity staff person responsible for your state at the appropriate EPA Regional Headquarters Office. A listing of Regional Offices, the states they cover, and contact information for the EPA Regional conformity staff people can be found at the following website:
http://www.epa.gov/otaq/transp/conform/contacts.htm

For questions of a general nature about conformity SIPs, please contact:
Laura Berry, berry.laura@epa.gov , 734-214-4858; or
Rudy Kapichak, kapichak.rudolph@epa.gov , 734-214-4574.

4. Q. How can I find out if a conformity SIP applies in my area?

A. Please contact the transportation conformity staff person at the appropriate EPA Regional Office (see previous Q & A for the website that lists these staff people). This staff person will have the most up-to-date information regarding the status of a specific state or area's approved or submitted conformity SIP.

Applying the July 1, 2004, Transportation Conformity Rule

5. Q. Do the provisions of the July 1, 2004, transportation conformity rule (69 FR 40004; "July 2004 rule") apply in states without approved conformity SIPs? What if the SIP has been submitted to EPA but has not been approved?

A. All of the provisions contained in the July 2004 conformity rule apply upon the effective date of EPA's rulemaking in states without previously approved conformity SIPs, including those states that have submitted SIPs that have not been approved by EPA.

6. Q. Does the July 2004 rule apply if a state has a state conformity rule under which it has been operating, but which has not been approved by EPA into the SIP?

A. Yes. If a state's conformity rule has not been approved by EPA as a conformity SIP (note that a conformity SIP could also take the form of a Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA), see Q&A 14 and 15, below), then the state does not have an approved conformity SIP. In this case, all of the July 2004 rule changes apply.

7. Q. What portions of the July 2004 conformity rule apply in areas that have approved conformity SIPs?

   A. The answer to this question is found in Appendix A for each section of the conformity rule. The table indicates which conformity rulemaking finalized each specific section and briefly indicates how the provision changed as a result of the July 2004 rulemaking. The last column of the table answers whether the July 2004 rule changes apply in areas with approved conformity SIPs.

   There are three possible answers to whether a provision applies and though we have provided general examples for each of these three answers, readers should not rely on these generalizations. States should thoroughly consider all the information provided in the table for each specific provision, in conjunction with review of the specifics of the particular state conformity rule.

   The three possible answers to whether or not a provision of the July 2004 rule applies are as follows:

   (1) **Yes, the change applies.** The answer is yes, for example, for all provisions that address the new air quality standards or the March 2, 1999, conformity court decision.

   (2) **No, the change does not apply.** The answer is no for major changes that are not the result of either the new air quality standards or the court decision. Such provisions cannot apply until the conformity SIP is revised to include it.

   (3) **States can interpret their existing rules consistent with the July 2004 rule so that the substance of the new rule applies. However, specific language of the July 2004 rule clearly does not apply until SIPs are changed.** This statement is the answer in the table for some types of minor clarifications, such as when references have been updated by the July 2004 rule. In addition, this statement applies in other situations, such as when the July 2004 rule added a pre-existing interpretation or policy into the rule for the purpose of codifying it. EPA believes that where changes merely codify an interpretation of the prior conformity regulations or change a reference without changing the requirement, states can and may want to interpret their existing conformity regulations consistent with the interpretation as EPA had done under the previous federal rule. Note, although a state is not compelled to interpret their conformity SIP in the same way as the July 2004 rule, some pre-existing or current EPA policy interpretations may still apply to their conformity SIP. The decision to interpret a conformity SIP in the same way as the July 2004 regulation should be made within interagency consultation process.

8. Q. Does a provision in the July 2004 conformity rule apply if a state has an approved conformity SIP, but it does not address that particular section?

A. If a conformity SIP does not include a complete section (i.e., an entire numbered portion, such as §93.106 or §93.122) then that section of the federal rule applies in that state. Therefore, if any section of the conformity rule is missing from a state's conformity SIP, that section as amended by the July 2004 rule applies immediately. However, if a state conformity SIP includes a particular section, then the state is still considered to have a rule addressing that section. In such cases, whether or not the new federal provision can apply immediately will depend on the specific section and nature of the change at issue. As discussed above, the Appendix A table indicates whether or not a specific July 2004 amendment or addition in such a section can apply in these circumstances.

9. Q. Can EPA approve a state conformity SIP that is based on an earlier version of the conformity rule rather than the July 2004 conformity rule?

   A: EPA can only approve SIPs that meet the regulations as updated by the July 2004 rule. Some provisions of the July 2004 rule change requirements from the previous version of the rule. Areas should include these new provisions in their conformity SIPs in accordance with 40 CFR 51.390. EPA regions can only approve conformity SIPs that address the current rule's requirements, including the 2004 rule revisions.

10. Q. What changes in the July 2004 rule that are not the result of either the new air quality standards or the court decision could make the most difference to areas that have approved conformity SIPs?

    A. Among the updates EPA made to the rule that are not the result of either the new air quality standards or the court decision, two stand out as those that could have the greatest impact on how conformity is done. First, EPA has streamlined the frequency requirements in §93.104 in the August 2002 and July 2004 rulemakings. States with approved conformity SIPs that do not include these changes may be required to make conformity determinations sooner and more frequently than the federal rule now requires. Specifically, state conformity SIPs may contain the requirement found in the August 1997 rule to determine conformity within 18 months of submission of a SIP that includes budgets, rather than within 18 months of EPA's adequacy finding for budgets in a submitted SIP. Another example is that state conformity SIPs may contain the requirement to determine conformity within 18 months of EPA's approval of any SIP that contains budgets found in the August 1997 rule, but the updated federal rule requires a conformity determination in this case only if those budgets have not already been used in a conformity determination.

    The second rule change that stands out is the update to the latest planning assumptions requirement in §93.110. Under the updated federal rule, areas can determine conformity based on the latest planning assumptions that are available at the time the conformity analysis begins. However, areas with approved conformity

SIPs that include §93.110 as it existed in the August 1997 rule must use the latest planning assumptions that are available at the time DOT makes its conformity determination. Areas may want to update their SIPs quickly to take advantage of these two rule changes as well as others made in the July 2004 rule.

11. Q. Can EPA expedite a state's conformity SIP revision so that an area could take advantage of the changes in the July 2004 rule that are not the result of either the new air quality standards or the court decision as soon as possible?

    A. Yes. EPA will work with states to approve conformity SIP revisions as expeditiously as possible by using approaches such as parallel processing or direct final rulemaking, so that areas can then take advantage of all of the amendments included in the July 2004 rule and subsequent rulemakings.

12. Q. Are two conformity SIP revisions required for areas designated for both the 8-hour ozone standard and the $PM_{2.5}$ standard?

    A. Not necessarily; states may be able to address all conformity rule provisions within the same conformity SIP. The July 2004 conformity rule includes criteria and procedures for determining conformity for the 8-hour ozone standard, as well as for the $PM_{2.5}$ standard. However, there are two conformity requirements for the $PM_{2.5}$ standard that were not addressed in July 2004 rule: $PM_{2.5}$ hot-spot requirements, and requirements for addressing $PM_{2.5}$ precursors in transportation conformity determinations. EPA intends to publish a supplemental notice of proposed rulemaking in the near future to request additional comment on options related to $PM_{2.5}$ and PM_{10} hot-spot requirements. EPA intends to finalize both the hot-spot requirements and the requirements for addressing $PM_{2.5}$ precursors as soon as possible; we anticipate these final rules to be completed in 2005.

    State and local agencies can consider addressing the July 2004 rule amendments and the upcoming $PM_{2.5}$ rule requirements within the same conformity SIP revision, to the extent possible given the requirements in §51.390, to minimize the work involved in creating or revising the conformity SIP. However, the drawback of this approach for a state with an approved conformity SIP is that it may need to wait longer before it can apply some of the provisions of the July 2004 rule (see Q&A 7, and Appendix A). If states decide to address all provisions in one conformity SIP, states should make sure that the conformity SIP includes the consultation procedures that apply specifically in $PM_{2.5}$ areas as well as in ozone areas.

    State and local agencies should keep in mind that any federal rule provisions that specifically address the new standards, whether they are included in the July 2004 final rule or an upcoming rulemaking, apply upon the federal rule's effective date for all areas that determine conformity. Therefore, the $PM_{2.5}$ hot-spot and precursor requirements will apply upon the effective date of EPA's final rule published in the

Federal Register, even if an area has already updated its conformity SIP to include the July 2004 final rule.

13. Q. If a state has consultation procedures that refer to general types of agencies (e.g., MPOs) rather than specific agencies (e.g., an MPO for a specific area), do the provisions of the conformity SIP apply for new or expanded nonattainment areas?

A. As indicated previously, the answer depends on the wording of the conformity SIP itself. If the SIP's wording could be interpreted to include expanded or new nonattainment areas in the state, the provisions of the conformity SIP would apply to these areas. However, if the conformity SIP includes wording that limits its applicability to particular areas, then it may not apply to new or expanded areas. If your state has an approved conformity SIP and you are unsure whether or not it applies to your particular area, please consult with your EPA Regional Office (see Q&A 3 for where to find contact information).

General Questions About Conformity SIPs

14. Q. In what part of the regulations is the requirement for conformity SIPs found?

A. The regulations that explain the requirements for a conformity SIP are found in 40 CFR Part 51, subpart T, at 40 CFR 51.390. This portion of the conformity regulation was published in the August 15, 1997, conformity rule (62 FR 43801). In addition, the July 1, 2004, conformity rule includes a discussion of conformity SIPs, at 69 FR 40068.

15. Q. What are the requirements for conformity SIP MOUs and MOAs?

A. Some states use a memorandum of understanding (MOU) or memorandum of agreement (MOA) to include the criteria and procedures of the conformity rule instead of a state regulation. Some states have used MOUs and MOAs to codify their consultation procedures, and have used a SIP revision to codify the remainder of the rule. In either case, a state can use an MOU or MOA if such a memo meets the following requirements:

a) it is fully enforceable under state law against all parties involved in interagency consultation and in approving, adopting and implementing transportation projects, TIPs, or transportation plans (see d below for how this is done).

b) it is submitted for inclusion in the SIP, and

c) it has been signed by all agencies that are covered by the conformity rule, including federal agencies and the recipients of funds designated under title 23

U.S.C. or the Federal Transit Laws (see the definition in §93.101). For example, MOU signers would include MPOs, local and state air agencies, state DOTs, transit agencies, FHWA, FTA, and EPA, and all current recipients of federal surface transportation funds, both public and private.

In addition, a state rule must be adopted which:

d) requires all future parties covered by the rule, including new recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws, to sign the MOU.

16. Q. If a state wants to revise its MOU, must it be done through the SIP process, or can the state just have everyone sign a new MOU?

A: An MOU revision would have to be approved through the SIP process because the MOU is part of the SIP.

17. Q. If a state has prepared its conformity SIP by incorporating the federal rule into the SIP by reference rather than repeating the rule verbatim, do the changes made to the federal rule automatically apply in that state, or does the state still have to update the conformity SIP to take advantage of changes to the federal rule?

A. The answer depends on what the conformity SIP indicates:

- If a state incorporates the federal rule into its SIP by reference, it may have incorporated the federal rule that existed as of the date of the incorporation. If so, subsequent updates to the federal rule do not automatically apply and a revision to the conformity SIP must be submitted within 12 months of a change to the federal rule.
- However, a conformity SIP that incorporates the federal rule by reference could also indicate that it also incorporates by reference any future changes made to the federal rule, although this is rare. In this case, the conformity SIP does not need to be revised when the federal conformity rule is updated.

If your state has an approved conformity SIP that incorporates the rule by reference, and you are unsure about whether or not it also includes all future changes to the federal rule, please consult with your EPA Regional Office (see Q&A 3 for where to find contact information).

18. Q. What sections of a state's conformity SIP should be tailored for a specific area?

A. Section 51.390(d) states that a conformity SIP must address all requirements of part 93, subpart A (e.g., all provisions of the conformity rule). In preparing transportation conformity SIPs, states can either adopt the language of the federal conformity rule verbatim or incorporate the rule into their SIP by reference.

However, there are some parts of the rule that either must be tailored in order to make them enforceable, or could be tailored to improve readability. These provisions are as follows:

Section 93.105: This section requires the adoption of area-specific consultation procedures. By definition, these procedures must be developed by local agencies in consultation with state and federal agencies. It is important that the state's consultation procedures are clearly defined and enforceable.

Several sections of the conformity rule include references to §93.105. If a state adopts these references verbatim, EPA could still approve the conformity SIP. Regardless of the cross-references, the state's consultation section would exist and explain how and when agencies should consult. However, if the state has the ability to change the §93.105 references, doing so would help to clarify their rule. The state can either change the reference in each section to reflect the proper state rule's reference, or include a generic provision in the SIP that says that "federal rule references to §93.105 correspond to §**** in the SIP."

Section 93.112: The second sentence in this section can be omitted from a state conformity SIP, because this language is not relevant once a conformity SIP is approved. However, a state could include this sentence without negative consequences.

Section 93.119(d)(2): This provision is required to be adopted verbatim. But, if a PM_{10} area "defines the baseline emissions...to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan," then the conformity SIP should specify the baseline year here. An NO_2 area could choose either to include this additional PM_{10} area-specific language verbatim, or delete everything after "calendar year 1990" in order to make it more readable. Either choice will not change the enforceability of this section.

Section 93.122(a)(4)(ii): This provision stipulates that the conformity SIP submission must require that written commitments to implement control measures be obtained prior to conformity determinations and that the commitments be fulfilled. The following is example language that could be substituted in the conformity SIP for 93.122(a)(4)(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."

However, if a state has already developed its conformity SIP and included the federal rule's language for §93.119(d)(2), it would still be enforceable.

Section 93.125(c): This provision is similar to 93.122(a)(4)(ii) and states that the SIP submission must require that written commitments for mitigation measures be obtained before conformity determinations are made and such commitments must be met. The following is example language that could be substituted in the conformity SIP for 93.125(c):

> "Written commitments to mitigation measures must be obtained prior to a positive conformity determination and project sponsors must comply with such commitments."

However, if a state has already developed its conformity SIP without adapting §93.125(c) and submitted it to EPA, this provision would still be enforceable.

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Appendix A: What Provisions of the Conformity Rule Apply in Areas with Conformity SIPs?

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
51.390 Implementation plan revision.	August 1997 rule: This provision is not included in conformity SIPs	(N/A)
93.100 Purpose.	August 1997 rule; not changed in July 2004 rule	(N/A)
93.101 Definitions.	August 1997 rule for majority of definitions, except the following: July 2004 rule additions: • 1-hour ozone NAAQS • 8-hour ozone NAAQS • Donut areas • Isolated rural nonattainment and maintenance areas. • Limited maintenance plan July 2004 rule clarifications: • Control strategy implementation plan revision • Milestone	Yes for the newly added July 2004 definitions: • 1-hour ozone NAAQS • 8-hour ozone NAAQS • Donut areas • Isolated rural nonattainment and maintenance areas. • Limited maintenance plan These definitions apply immediately because no approved conformity SIP includes them. For the July 2004 clarified definitions: • Control strategy implementation plan revision • Milestone States can interpret their existing rules consistent with the definitions in the July 2004 rule. However, the specific language of the July 2004 clearly does not apply until SIPs are changed.

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
93.102 Applicability.	August 1997 rule, except the following August 2002 rule addition: (d) added one-year grace period provision, as a result of CAA amendment which applied immediately July 2004 rule additions: (b)(1) PM2.5 added to list of pollutants (b)(3) road dust for PM2.5 areas (c) requires currently conforming plan and TIP for project phase approvals (d) PM2.5 areas added to grace period provision July 2004 rule clarification: (b)(2)(iii) clarified only; no practical change	Yes for the August 2002 rule addition: (d). This provision applies immediately as it implements a provision of the statute, which applies as a matter of law. Yes for the July 2004 rule additions in this section: (b)(1): new standards (b)(3): new standards (c): court decision (d): new standards These provisions apply immediately, because they are related to the new standards or court decision. For the July 2004 clarification: (b)(2)(iii) States can interpret their existing rules consistent with the July 2004 rule so that the substance of the new rule applies. However, specific language of the July 2004 clearly does not apply until SIPs are changed.
93.103 Priority.	August 1997 rule-- not changed in July 2004 rule	(N/A)

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
93.104 Frequency of conformity determinations. ***Note**: By "old," we mean a provision as it existed in the CFR as of the August 1997 rulemaking. "Old" provisions have either been deleted or renumbered. By "new," we mean a provision that has been updated or added by the July 2004 rulemaking.	August 1997 rule, except the following: August 2002 rule revision: Old* (e)(2): provision changed so 18-month clock starts upon EPA's adequacy finding instead of SIP submission July 2004 rule revisions and deletions: Old (c)(4) deleted; this was the requirement to determine conformity of the TIP within 6 months of the plan Old (e)(1) deleted; this was the 18-month trigger for November 1993 date Old (e)(3) revised so that 18-month clock for SIP approvals applies only if budgets not already used Old (e)(4) deleted; this was the 18-month trigger for TCM changes Old (e)(5) revised so that a FIP change to a TCM does not trigger an 18-month clock July 2004 rule renumbering: Old (e)(2) → new (e)(1) Old (e)(3) → new (e)(2), revised as noted above Old (e)(5) → new (e)(3), revised as noted above July 2004 rule clarifications: (b)(3) clarified only; no practical change (c)(3) clarified only; no practical change (d) clarified and combined provisions; no practical change	No for the following August 2002 and July 2004 revisions/deletions: Old (c)(4), Old (e)(1), Old (e)(2), (updated by August 2002 rule) Old (e)(3) Old (e)(4), and Old (e)(5) These provisions continue to apply in states with approved conformity SIPs that include them, because revisions to these provisions are not related to the new standards or court decision. For July 2004 clarifications: (b)(3), (c)(3), and (d), States can interpret their existing rules consistent with the July 2004 rule so that the substance of the new rule applies. However, the specific language of the July 2004 rule clearly does not apply until SIPs are changed. Although these provisions have been revised, they reflect what has been EPA's existing policy, which continues to apply.

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
93.105 Consultation.	August 1997 rule, except July 2004: (c)(1)(vii): minor nonsubstantive change to update a reference	For (c)(1)(vii): States can interpret their existing rules consistent with the July 2004 rule so that the substance of the new rule applies (in this case, merely reference changes). However, the specific language of the July 2004 rule clearly does not apply until SIPs are changed.
93.106 Content of transportation plans.	August 1997 rule, except July 2004 revision: (b) expanded; now includes additional situations under which a 2-year grace period for transportation plan content would apply, for certain CO and ozone areas.	No for revisions to (b): i.e., (b)(2) and (b)(3) do not apply. The expanded provisions of (b) are not related to the new standards or court decision.
93.107 Relationship of transportation plan and TIP conformity with the NEPA process.	August 1997 rule– not changed in July 2004 rule.	(N/A)
93.108 Fiscal constraints for transportation plans and TIPs.	August 1997 rule– not changed in July 2004 rule.	(N/A)

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.	August 1997 rule: (a) introduction July 2004 rule revisions: (b) table 1, conformity criteria (c) 1-hour ozone areas (f) CO areas (g) PM_{10} areas (h) NO_2 areas (l) isolated rural areas In these paragraphs, the phrase "emissions reduction tests" is replaced by "interim emissions tests." In addition, in (c)(1), (f)(2), (g)(2), and (h)(2), the July 2004 provisions clarify when budgets in SIPs must be used for conformity: (i) Upon the effective date of EPA's adequacy finding; (ii) Upon the publication date of EPA's approval of a SIP; and (iii) Upon the effective date of EPA's approval of a SIP made via a direct final rule. July 2004 rule additions: (d) 8-hour ozone areas without budgets (e) 8-hour ozone areas with 1-hour budgets (i) PM2.5 areas (j) limited maintenance plans (k) insignificance	July 2004 rule revisions: With regard to the change in the name of tests (from "emissions reduction tests" to "interim emissions tests") in paragraphs (b), (c), (f), (g), (h), and (l), states with approved conformity SIPs can interpret their existing rules consistent with the July 2004 rule. Yes for provisions in (c)(1)(i), (f)(2)(i), (g)(2)(i), and (h)(1)(i), because these provisions are a result of the court decision. They state that the budget test must be used upon the effective date of EPA's adequacy finding. For the remaining changes in paragraphs (c), (f), (g), and (h), such as the addition of (c)(1)(ii) and (iii), (f)(2)(ii) and (iii), etc., states can interpret their existing rules consistent with the July 2004 rule. Though these regulatory text provisions are new, they reflect what has been EPA's existing policy, which continues to apply. For July 2004 rule additions: Yes for paragraphs (d), (e), and (i), as they address the new standards. For paragraphs (j) and (k), states can interpret their existing rules consistent with the July 2004 rule so that the substance of the new rule applies. These two paragraphs address limited maintenance plans and insignificance respectively. Though these regulatory text provisions are new, they reflect what has been conformity policy since 1993.

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
93.110 Criteria and procedures: Latest planning assumptions.	August 1997 rule, except for: July 2004 rule revision: (a) changed the point at which latest planning assumptions are determined for a conformity determination.	July 2004 rule revision: No, this change to (a) does not apply in areas with approved conformity SIPs, because this change is not related to the new standards or court decision. Areas in states with an approved conformity SIP must continue to use the latest planning assumptions available when the conformity determination is made, until the SIP is revised to reflect the July 2004 rule.
93.111 Criteria and procedures: Latest emissions model.	August 1997 rule – not changed in July 2004 rule	(N/A)
93.112 Criteria and procedures: Consultation.	August 1997 rule – not changed in July 2004 rule	(N/A)
93.113 Criteria and procedures: Timely implementation of TCMs.	August 1997 rule – not changed in July 2004 rule	(N/A)
93.114 Criteria and procedures: Currently conforming transportation plan and TIP.	August 1997 rule – not changed in July 2004 rule	(N/A)
93.115 Criteria and procedures: Projects from a plan and TIP	August 1997 rule – not changed in July 2004 rule	(N/A)

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
93.116 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).	July 2004 rule clarified the time period to be addressed in hot-spot analyses.	States can interpret their existing rules consistent with the July 2004 rule so that the substance of the new rule applies. However, the specific language of the July 2004 rule clearly does not apply until SIPs are changed. EPA believes the July 2004 rule change simply clarifies previous existing hot-spot requirements established in the 1997 rule. The July 2004 preamble states "EPA does not anticipate that today's clarification would significantly change how project-level analyses are being conducted in practice," (69 FR 40056). In other words, in areas with approved conformity SIPs, EPA expects that the year(s) chosen for the hot-spot analysis would be the year where emissions are expected to be the greatest. In choosing such a year, the hot-spot analysis would meet the requirement to consider the 20 year period as described in the 2004 rule.
93.117 Criteria and procedures: Compliance with PM_{10} and $PM_{2.5}$ control measures.	July 2004 rule added PM2.5 to this provision, so that compliance with SIP control measures is required in PM2.5 areas.	Yes, because this change is related to the new PM2.5 standard.

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
93.118 Criteria and procedures: Motor vehicle emissions budget.	August 1997 rule except the following: July 2004 rule additions: (b)(2)(iv): analysis years before last year of maintenance plan must be ≤ budgets from most recent prior year. (f): adequacy procedures July 2004 rule revisions: (a): reference updated (b): intro text revised to include attainment year as a year for which consistency must be demonstrated; (b)(2)(iii) revised; (e): (e)(1), (e)(2), (e3)	July 2004 rule additions: For paragraph (b)(2)(iv), states can interpret their existing rules consistent with the July 2004 rule so that the substance of the July 2004 provision applies. However, the specific language of the July 2004 rule clearly does not apply until SIPs are changed. Though this regulatory text provision is new, it reflects what has been EPA's existing policy which continues to apply. The provision also mirrors the 1997 provision in (b)(1)(ii), which covers the period of time before maintenance plans are submitted. Yes for paragraph (f), because this addition of the adequacy process to the rule is a result of the court decision. July 2004 rule revisions: For provisions in (a), (b) introductory text, and (b)(2)(iii), states can interpret their existing rules consistent with the July 2004 rule so that the substance of the July 2004 provision applies. The July 2004 rule language for paragraph (b) introductory text clarifies that the attainment year is a year for which consistency with budgets must be demonstrated. However, EPA assumes most areas were doing so prior to July 2004 rule because of the requirement to analyze the attainment year in §93.118(d). The July 2004 rule language for (b)(2)(iii) clarifies an ambiguity in the prior 1997 rule, but even before this clarification EPA interpreted this paragraph to require conformity to budgets in submitted adequate SIPs. Yes for paragraph (e) – (e)(1), (e)(2), and (e)(3), because these changes are a result of the court decision.

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.	August 1997 rule, except the following: July 2004 rule revisions: Title of section (a) intro (b) ozone areas (c) CO areas (d) PM_{10} and NO_2 areas (f) pollutants (g) analysis years July 2004 rule additions: (b)(1)(ii)(B) and (b)(2)(ii)(B), 2002 test for 8-hour ozone areas (e) $PM_{2.5}$ areas (f)(7) and (8), PM2.5 pollutants (g)(2): allows areas to skip an analysis year in the build/no-build test if action and baseline scenarios are the same	July 2004 rule revisions: No for the following paragraphs: (a), (b) except for (b)(1)(ii)(B) and (b)(2)(ii)(B), (c), (d), (f) except for (f)(7) and (f)(8), and (g) because these revisions were made to interim emissions test(s) in 1-hour ozone, CO, NO_2, and PM_{10} nonattainment or maintenance areas. These revisions do not address the new standards or the court decision. July 2004 rule additions: Yes for the following paragraphs: (b)(1)(ii)(B) and (b)(2)(ii)(B) (e), and (f)(7) and (8), because these provisions address the new 8-hour ozone and PM2.5 standards. For (g)(2), states with approved SIP could make an interpretation that if the build and no-build scenarios are the same, they have in effect done the analysis per se, but should consult EPA before doing so. Prior to the July 2004 rule, this provision did not specify this flexibility.
93.120 Consequences of control strategy implementation plan failures.	August 1997 rule except for the following: July 2004 revision: (a)(2) specifying when conformity freezes start for SIP disapprovals without a protective finding.	Yes, (a)(2) applies because this change is a result of the March 1999 court decision.

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
93.121 Requirements for adoption of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.	August 1997 rule except for the following: <u>July 2004 revisions:</u> (a) revised (b) references updated, minor change to (b)(1) (c) added for limited maintenance plans and areas where motor vehicles are insignificant	 Yes for paragraph (a), because these changes directly result from the court decision For paragraph (b), states can interpret their existing rules consistent with the July 2004 rule, so that the substance of the new rule applies. However, the specific language of the July 2004 rule clearly does not apply until SIPs are changed. No for paragraph (c), because (c) creates an exception that is not included in states' approved conformity SIPs.
93.122 Procedures for determining regional transportation-related emissions	August 1997 rule except for the following: <u>July 2004 revisions/additions:</u> (c) expands two year grace period before modeling requirements apply (f) PM2.5 construction dust (g)(3) clarifies conformity determination that relies on a previous regional emissions analysis does not satisfy frequency requirements	 No for paragraph (c), which creates an exception that is not included in states' approved conformity SIPs. However, practical impact is expected to be limited if any. Yes for paragraph (f), which applies to the new PM2.5 air quality standard For paragraph (g)(3), states can interpret their existing rules consistent with the July 2004 rule so that the substance of the new rule applies. Even though this provision is not included in states' conformity SIPs, it simply clarifies an existing requirement and describes how the conformity rule has always been interpreted.
93.123 Procedures for determining localized CO and PM10 concentrations (hot-spot analysis)	August 1997 rule – not changed in July 2004 rule	(N/A)

Provision of current federal conformity rule	What rule finalized this provision?	Does the change to this provision apply immediately in areas with an approved conformity SIP based on the 1997 rule, if the SIP includes this provision? --Why or why not?
93.124 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission)	August 1997 rule, except for the following: July 2004 rule deletion: (b) deleted (re: safety margins in SIPs submitted before 1993), remaining paragraphs relettered.	Yes, because this change resulted from the court decision
93.125 Enforceablity of design concept and scope and project-level mitigation and control measures	August 1997 rule except for the following: July 2004 rule revision: Reference changes	States can interpret their existing rules consistent with the July 2004 rule so that the substance of the new rule applies (in this case, reference updates). However, the specific language of the July 2004 rule does not apply until SIPs are changed.
93.126 Exempt projects	August 1997 rule except for the following: July 2004 rule revision: Reference change to be consistent with DOT's regulations	States can interpret their existing rules consistent with the July 2004 rule so that the substance of the new rule applies (in this case, reference updates). However, the specific language of the July 2004 rule does not apply until SIPs are changed.
93.127 Projects exempt from regional emissions analyses	August 1997 rule – not changed in July 2004 rule	(N/A)
93.128 Traffic signal sychronization projects	August 1997 rule – not changed in July 2004 rule	(N/A)