MEETING NOTICE
AND AGENDA

SAN DIEGO CONFORMITY WORKING GROUP
The San Diego Conformity Working Group may take action on any item appearing on this agenda.

Wednesday, October 6, 2010
10:30 a.m. to 12 noon

SANDAG, Conference Room 8C
401 B Street, Suite 800
San Diego, CA 92101-4231

Staff Contact: Rachel Kennedy
(619) 699-1929
rke@sandag.org

AGENDA HIGHLIGHT

• 2050 REGIONAL TRANSPORTATION PLAN (RTP):
CONFORMITY CRITERIA AND PROCEDURES

Please contact Rachel Kennedy prior to the meeting if you wish to participate by conference call.

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### SAN DIEGO CONFORMITY WORKING GROUP (CWG)

**Wednesday, October 6, 2010**

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<td><strong>INTRODUCTIONS</strong></td>
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The summary of the September 1, 2010, Conformity Working Group (CWG) meeting is attached. The CWG is asked to review the meeting summary.

| 3.    | **PUBLIC COMMENTS/COMMUNICATIONS** |

Members of the public will have the opportunity to address the Working Group during this time.

| 4.    | **2010 REGIONAL TRANSPORTATION IMPROVEMENT PLAN (RTIP)** |

At its September 24, 2010, meeting the SANDAG Board of Directors approved the 2010 RTIP including its Air Quality Conformity Analysis and the Air Quality redetermination of the 2030 RTP. Staff will provide a brief summary of this action.

| +5.   | **2050 REGIONAL TRANSPORTATION PLAN (RTP): CONFORMITY CRITERIA AND PROCEDURES** |

The CWG will discuss the conformity criteria and procedures to be followed to determine conformity of the 2050 RTP. SANDAG staff will make brief presentations on the following topics:

- a. 2050 RTP Public Outreach
- b. Latest Emissions Model
- c. Revenue Constrained Financial Assumptions

| +6.   | **2050 RTP: PROPOSED CONFORMITY ANALYSIS METHODOLOGY** |

At its September 17, 2010, meeting the Transportation Committee accepted for review and distribution the draft proposed methodology for conducting the air quality conformity determination for the 2050 RTP for a 30-day comment period, and scheduled a public hearing to solicit public comments on shortening the conformity timeline and proposed methodology for the regional emissions analysis for the October 15, 2010, Transportation Committee meeting.
7. PROPOSED CONFORMITY RULE REVISIONS

On August 13, 2010, the U.S. EPA published proposed modifications to the conformity rule in the federal register for a 30-day comment period, which closed on September 13, 2010. U.S. EPA staff will provide a summary of the proposed changes and comments received.

8. EMFAC 2010 DEVELOPMENT

California Air Resources Board (ARB) staff will provide the CWG with an update on the development of the next generation of EMFAC software.

9. EIGHT-HOUR OZONE STANDARD RE-CLASSIFICATION UPDATE

Staff from U.S. EPA and the San Diego Air Pollution Control District will provide an update on the proposed rule to Implement the 1997 8-Hour Ozone standard.

10. OTHER BUSINESS

11. UPCOMING MEETINGS

The next meeting of the San Diego Region Conformity Working Group is scheduled for Wednesday, November 3, 2010, from 10:30 a.m. to 12 noon at SANDAG.

+ next to an item indicates an attachment
MEETING SUMMARY OF SEPTEMBER 1, 2010

Item #1: Introductions
Self-introductions were made. See attached attendance list.

Item #2: Meeting Summary of April 7, 2010
Rachel Kennedy, SANDAG, asked the CWG to review the meeting summary. No corrections were made.

Item #3: Public Comments/Communications
No public comments were made.

Item #4: Draft 2010 Regional Transportation Improvement Program (RTIP)
Ms. Kennedy commented that the SANDAG Board of Directors released the Draft 2010 RTIP and its conformity analysis for a 30-day public review period on July 23, 2010, and scheduled a public hearing for the September 3, 2010, Transportation Committee meeting.

Michelle Merino, SANDAG, confirmed this information and added that the 2010 RTIP is a $10 billion document and has a balanced amount of modes and fund types. It has closed its 30-day comment period, and SANDAG received about 11 comments that focused on expanding highways, goods movement, and regional cooperation. These public comments are posted on the SANDAG Web site. Responses to these comments were posted as part of the agenda for the September 3 Transportation Committee meeting.

The Board is scheduled to adopt the final 2010 RTIP along with the Air Quality Conformity and Redetermination for the RTP on September 24, 2010. The final 2010 RTIP is due to the State on October 1, 2010, and federal approval is expected around December 15, 2010.

Ms. Kennedy added that comments received at the September 3 meeting will be incorporated into the final 2010 RTIP.
Item #5: 2050 Regional Transportation Plan (RTP): Conformity Criteria and Procedures

a. Draft 2050 RTP Air Quality Conformity Schedule (updated)

Ms. Kennedy pointed out that the Draft 2050 RTP Air Quality Conformity Schedule was updated to reflect the change in the date for the EMFAC 2010 release, as well as changes in the dates when a few items will be presented to the Transportation Committee.

b. 2050 Growth Forecast

Beth Jarosz, SANDAG, mentioned that the 2050 Growth Forecast was briefly discussed at the March CWG meeting. This time, Ms. Jarosz focused both on the outcome of the forecast and the process that was followed to work with the different jurisdictions, which was more comprehensive than in the past.

The Regional Results in terms of population, jobs, and housing show that the San Diego region currently has about 3.2 million residents and regional population is expected to increase to 4.38 million by 2050. Despite the current recession and job losses (the chart shows a slight dip in 2010), 1.9 million jobs are expected for 2050. In order to support this population and job growth the region will need 1.53 million housing units by 2050. Ms. Jarosz commented that it is often difficult to find sufficient residential land to accommodate the projected housing growth. For this reason, SANDAG worked very closely with the jurisdictions to understand where their plans were changing and could potentially accommodate the 1.53 million housing units.

Ms. Jarosz added that SANDAG’s track record in forecasting is very good, particularly at the regional level. SANDAG’s forecasts tend to be within one half of 1 percent of error for each forecast year, for a total of +/- 6 to 9 percent error over a 30-year forecast horizon. SANDAG does not expect that this forecast will be different in this regard, so there is confidence that the population forecast of 4.38 million residents is a strong projection for the region.

The process to develop the regional forecast starts with an econometric model that looks at historical data in San Diego, in California, and in the nation. This model is calibrated based on historic trends from 1970 to 2008. Also, national economic projections are purchased because as the nation grows, so grows California and San Diego. SANDAG also looks at existing demographic characteristics because most of the region’s population growth is based on the population that lives here today having children and living longer. SANDAG also looks at demographic trends in terms of workforce participation, household formation, and fertility and mortality trends. All of this is used to put together the regional growth projections for population, jobs and housing, and several other economic factors. While SANDAG’s team is very strong, there is also a peer review panel of experts in demography, economics, housing, and specific industry groups, who review the forecast at two points during the process. The first point is during the initial draft period, where the peer review panel provides feedback, which is then taken into consideration by SANDAG. After further researching the feedback, SANDAG makes any necessary adjustments. A final forecast is then produced and reviewed again by the peer review group before SANDAG starts to use that information for subregional forecasting.
The subregional forecast is driven by local land use inputs. To produce the subregional forecast, SANDAG works very closely with the local jurisdictions to understand their existing land use conditions and their general plan updates. SANDAG goes parcel by parcel through the land use plans of every single jurisdiction in the San Diego region. There are 890,000 parcels. It takes a staff of five at SANDAG, and at least two people from each city, a year to go over all of this information. SANDAG looks at both general plans and constraints to development, such as steep slopes, flood plains, habitat preserve areas, etc., to try to have a good understanding of where residential and commercial development is possible in the San Diego region in the future.

In the last several forecasts that SANDAG has produced, this process has resulted in a deficit, where it has been projected that at a regional level a certain amount of housing is needed but the local plans do not necessarily accommodate that many housing units. In past forecasts it has been assumed that that growth will be accommodated by regions just outside of San Diego’s borders, particularly in northern Baja California and in southwestern Riverside County. In this forecast there are a couple of factors that have come into play, one of which is a new state legislation that requires taking a closer look at local land use plans and trying to find a way to accommodate that population growth. Conveniently, about half of the region’s jurisdictions have started to update their general plans over the last five years. The combination of cities who have updated their general plans and cities that are working on updating their general plans has resulted in sufficient residential capacity to accommodate future population growth.

In terms of the process, SANDAG produces a Regional Forecast, works with the local land use inputs, and tries to understand past development priorities including proximity to job centers and where growth has happened in the past. Then, SANDAG looks at the likelihood of development, a lot of which is influenced by travel times and travel time choice. It is still assumed that some people in the region chooses to live in southwestern Riverside and commute, but not because they have to. It’s a career choice or a residential location choice process. SANDAG produced a draft of the regional forecast in December 2009. This draft was presented to all the local planning directors, who gave their reviews. A couple of adjustments were made to this draft and the final forecast was presented to SANDAG’s Board of Directors in February 2010.

Ms. Jarosz presented a series of maps (included in the agenda) that resulted from the 2050 Growth Forecast showing the job distribution in the region in 1995 and 2008, and the projected job distribution in 2050. During a period of more than a decade, the job growth was predominantly suburban, especially North County, along the costal area into the East County (El Cajon and Eastern Chula Vista). In the future, most of the job growth is projected to be within existing urban areas along the region’s major transportation corridors, particularly along the rail corridor, the trolley line, the SPRINTER and the COASTER. When the transit investment area (identified by the local transportation agencies as the area targeted for priority funding for transportation services) was overlaid on the region’s map, it was found that about 70 percent of future job growth is likely to fall within this area. Furthermore, about 30 percent of future job growth is expected to fall within areas identified by local jurisdictions as Smart Growth Opportunity Areas, and about 40 percent is likely to be within a 10-minute walk of existing high-frequency transit services.

Ms. Jarosz made similar comparisons for housing. Ms. Jarosz presented maps showing housing distribution in 1995 and 2008. She pointed out that a considerable amount of housing growth during this 13-year period was in the suburbs and exurbs, with eastern Chula Vista showing some of the highest growth. In 2050, most of the growth is expected within the urban core. Seventy-five
percent of future housing growth is expected to happen within the Transit Investment Area, half is expected to happen in Smart Growth Opportunity Areas, and more than half is expected to happen within a 10-minute walk of existing high-frequency transit. Ms. Jarosz commented that this is a fairly big shift for the San Diego region in terms of what has been seen in development patterns in the past. This has been largely driven by local jurisdictions and builders, shifting towards more mixed-use and urban types of developments. The local building community suggested that this type of development is going to be challenging in the future; however, they feel like we are already moving in that path. Historically, San Diego housing has been 60 percent single-family and 40 percent multi-family; already that ratio has shifted to 60 percent multi-family and 40 percent single-family. SANDAG expects that in the future this ratio will get closer to 80:20.

In prior forecasts SANDAG has used an interregional commute model to shift some of San Diego’s residential growth into surrounding communities, mostly Riverside County and Baja California. In the present forecast this interregional commute model is still being used as a predictor of residential location choice; however, it is expected that a substantially smaller share of people will be making that choice in the future because there is sufficient residential capacity in this forecast. In the last forecast, around 99,000 households located outside of the region would send a worker into the region by 2030; in the present forecast it is only 15,000 households by 2050. This represents a reduction of about a quarter of interregional commuting in a 20-year time period.

Ms. Jarosz mentioned that one of the big findings in the present forecast from a transportation perspective is that half of the population growth is going to be in the 60 and older age group. Furthermore, a full 10 percent of the change between the 3.13 million and 4.38 million people from 2008 to 2050 will be in the age group of 85 and older. This means that one of the big challenges in terms of transportation planning for the region will be figuring out how to provide mobility to the senior population.

To conclude, Ms. Jarosz commented that the 2050 Growth Forecast was produced through extensive work with local jurisdictions and partner agencies including County Water Authority, Caltrans, and Airport Authority. SANDAG has adjusted the regional projections to reflect the economic downturn, and it is expected that it will take several years before the region starts growing again. Eventually, the region will grow to have 4.38 million residents, 1.9 million jobs, and 1.53 million houses. Most of the region’s growth is expected to be within the transit investment areas close to high-frequency transit. There will continue to be some interregional commute because people have location choice; however, this will not be because the region does not have sufficient housing capacity. Finally, one of the biggest shifts overall in the future is towards an aging population.

Denis Wade, ARB, wanted to confirm if the forecast reflected the Series 12 that the Board adopted earlier this year and if it still remained as adopted. Ms. Jarosz responded that the Board accepted the 2050 Growth Forecast (Series 12) for use in planning purposes in February 2010. There are two jurisdictions that have been actively working on plan updates to add even more residential density in their urban areas, mainly National City and Escondido. These jurisdictions have asked SANDAG to incorporate those plan updates into the final forecast, so there might be a few minor adjustments to the distribution of growth to accommodate the general plan updates of these two cities. Otherwise, the regional projections will stay the same and the sub-regional projections will largely remain as they are at the moment for the final 2050 RTP.
c. 2050 RTP Travel Demand Model

Rick Curry, SANDAG, gave a presentation focusing on the changes that occurred within the transportation model between the 2030 RTP and the model that will be used for the 2050 RTP.

Mr. Curry mentioned that there are significant changes made to the software, to the base data. The software has been upgraded from TransCAD 4.8 to TransCAD 5.0; in the end results there is not too much difference, but there are a lot of approach changes that have to take place. For the base data, the zone system has also been upgraded for the traffic analysis system and also the previous system that was used for the nonmotorized trip-making with an unlimited choice model. A lot of the information has been updated from the previous base year, which was 2003/2004 to 2008. This has required, among other things, to update the traffic counts that are used for the transportation model. The new land use information from the growth forecast has been incorporated. A number of different costs have been updated such as auto operating costs for the transportation model, transit fares and transit fare structures, and parking costs. A parking inventory was recently concluded, so there is new information on parking costs throughout the region.

Mr. Curry commented that staff has spent a significant amount of time dealing with the base year network. SANDAG asked all jurisdictions to assist in reviewing its transportation network. Over 2,500 comments were received through a web-based interactive system regarding posted speed limits, number of lanes, stop signs and traffic systems, etc. As a result, the base year transportation network was updated based on these comments.

Some model components that were altered include the incorporation of a 4D model component. This component deals with urban design of land use such as the density of the area, diversity, definition, etc. These factors help determine whether there might be increased walking, biking, increased transit use, trip length, etc., in order to incorporate into the model the sensitivity to these design characteristics for future mixed use developments within SANDAG’s growth forecast.

Mr. Curry added that another important change is the heavy-duty truck model. This model focuses on low heavy-duty, medium heavy-duty, and heavy heavy-duty truck trips. Also, there are classes that are used in this model that are directly comparable to the classes in EMFAC to help with consistency between these models. A few elements of the mode choice model have been updated. The Federal Transit Administration (FTA) has accepted the new mode choice model for developing travel forecasts for Mid-Coast. SANDAG went through a long process to change various components of this model and there is confidence that the mode choice model is very well validated for use in the 2050 RTP. FTA requires a lot of faithful network coding. For this reason, elements such as station elevation (in elevated stations requiring additional walk distance) have been included.

Finally, the loading method for the highway planning algorithm has changed to speed up the transportation model to reduce it from 18 hours to about 15 hours.

Carl Selnick, APCD, asked if all these changes that will be reflected in the 2050 RTP were also reflected in the 2010 RTIP. Mr. Curry commented that there were a couple of differences between the 2010 RTIP and what is being used for the 2050 RTP. First, the results of the parking study were not ready in time to incorporate the new parking cost for the 2010 RTIP. The transit fares were updated for the 2010 RTIP, but the fare structure was not in place at that point. Other than that, there are only a few small calibration elements that have been done. Elisa Arias, SANDAG,
commented that when SANDAG does the conformity determination for the 2050 RTP, conformity for the 2010 RTIP will also be re-determined for consistency purposes; so any minor details that might be different will be taken care of then. Ms. Kennedy added that in conjunction with the RTP conformity determination, SANDAG will provide an opportunity for the local jurisdictions and others to submit capacity-increasing projects for the 2010 RTIP amendment that will be included in the conformity process.

**Item #6: 2050 RTP Draft Proposed Conformity Analysis Methodology**

Ms. Kennedy mentioned that this item was discussed in a fair amount of detail during the previous CWG meeting. However, it is again part of the agenda to provide the group with another opportunity to review this information and provide any comments that may have come up.

Ms. Kennedy provided an overview of the discussion that took place during the previous CWG meeting. She commented that at after the discussion at the August 4 CWG meeting, SANDAG requested that anyone who had additional comments send them in writing no later than August 20. No comments were received.

At its September 17, 2010, meeting the Transportation Committee will be asked to accept for review and distribution the draft proposed methodology for conducting the air quality conformity determination for the 2050 RTP for a 30-day comment period, and schedule a public hearing to solicit public comments on shortening the conformity timeline and proposed methodology for the regional emissions analysis for the October 15, 2010, Transportation Committee meeting.

Ms. Kennedy pointed out that the staff report on the Draft Proposed Conformity Analysis Methodology (included in the agenda packet) was fairly unchanged from the way it was presented last month, except for a few updates as far as some of the dates included in the Next Steps section, which coincide with the two Transportation Committee meetings just mentioned.

Ms. Kennedy asked the members of the CWG if there were any additional comments or thoughts on shortening the timeframe, or on the proposed methodology, or on SANDAG’s approach as far as the Transportation Committee meetings and the public hearings. There were no comments.

Ms. Kennedy commented that the staff report will be submitted for public review and it will be posted to SANDAG’s Web page under both the Conformity RTP section and the Public Notices section. A notification of the public review period will be sent to the CWG, and SANDAG will provide notices about the public review period through the 2050 RTP e-mail list serve.

**Item #7: EMFAC 2010 Development**

Denis Wade, CARB, stated that there were no updates.

Ms. Arias asked when MPOs would be able to submit updated travel activity data. Mr. Wade replied that as soon as it was available. He added that there was no cut-off date at this point; but it was better to send it sooner rather than later, and CARB would do its best to incorporate the information into the model. Ms. Arias asked if there was a specific format to submit the data. Mr. Wade mentioned that there should be no changes to what has been asked for in the past, and that he would speak to Mr. Curry, SANDAG, to make sure everything was clear.
**Item #8: 8-Hour Ozone Standard Re-classification Update**

John Kelly, EPA, was not able to join the call. Carl Selnick did not have any updates.

**Item #9: Other Business**

No other business.

**Item #10: Upcoming Meetings**

Ms. Kennedy stated that the next meeting of the CWG is scheduled for Wednesday October 6, 2010, from 10:30 a.m. to 12 noon. Meeting materials will be sent to the group in advance.

Ms. Kennedy added that the statewide CWG meeting is scheduled for September 16 from 10 a.m. to 1 p.m. The meeting will be through conference call.
## San Diego Region Conformity Working Group

### Meeting Attendance

**September 1, 2010**

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<tr>
<td>Denis Wade (phone)</td>
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<td>Elisa Arias</td>
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<td>Carl Selnick</td>
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<td>TransNet (^1) (Cash)</td>
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*Ranges do not add due to rounding.

Notes:

\(^1\) Estimated total sales tax receipts based on final Board approved forecast (Jan. 2010). An Extension of TransNet beyond 2048 at same rate is also assumed.

\(^2\) Housing units based in final Board approved forecast (Jan 2010); escalate at 2%/year to 2015, then 3%/year (based on historical growth in CCI) as outlined in the Ordinance

\(^3\) From state controller’s report - there are 3 components: gas tax, general fund, other revenues - assumed 3.0% increase in ‘other’ revenues spent based on average since 1992

\(^4\) New revenues assume to start 2016, assume 1/2 of TransNet estimate

\(^5\) Fare revenues for FY 10 to 15 from MTS/NCTD estimate presented at 6/18/10 TC meeting; 2%/year growth thereafter (average over the 5-year estimate) includes estimated service/fares for the TransNet funded mid-range plan; does not include any other expansion of service

\(^6\) Actuals thru. 2015; starting in 2016 use historical formula share, increase by 5% per year

\(^7\) Based on future fuel consumption as estimated by Caltrans - 2.13% growth factor (but no change to fuel price)

\(^8\) Per recent state law, growth at 3%/year

\(^9\) Actual Prop 18 to 2014; no revenues to 2018, starting 2019 assume $1.25B over a 5-year period ($250M/yr), then escalate 5% every 5 years. This category includes goods movement

\(^10\) Thru. 2015 high amount reflects assumption of New Starts (NS) for Mid-coast; outyears based on average historical award plus 5% escalation; assume one $600M NS plus three Small Starts per decade.

\(^11\) Starting 2015 5% annual increase; starting in 2020 and every 5 years thereafter 10% increase due to reauthorization (conservative increase though real increase from ISTEA is 25.5% per reauthorization); another 10% increase in FY 2024 to include Mid-coast service data; 15% increase in 2033 to include service expansion (per mid-range transit plan) data; no other service expansion is assumed

\(^12\) Actual to FY 2013; starting 2014 use Highway Priority Project (HPP) average of $17M/yr escalated at 5%/year

\(^13\) Due to the newness of the program, assumption based on actual award to-date $14M/yr; escalate by 2.5%/year

\(^14\) Actual to FY 2010; then average allocation to the region during SAFETEA-LU ($19M) starting FY 2012, grow at 5%/yr
TRANSPORTATION COMMITTEE

September 17, 2010

AGENDA ITEM NO.: 4

Action Requested: ACCEPT

2050 REGIONAL TRANSPORTATION PLAN (RTP): DRAFT PROPOSED METHODOLOGY FOR CONDUCTING THE RTP AIR QUALITY CONFORMITY DETERMINATION

File Number 3100600

Introduction

SANDAG is currently developing the 2050 Regional Transportation Plan (RTP), which is anticipated to be adopted in summer 2011 along with its air quality conformity determination. While the horizon year of this RTP is 2050, both the current version of the emissions model approved by the U.S. Environmental Protection Agency (EMFAC 2007) and the new version of the model (EMFAC 2010), which is under development by the California Air Resources Board (CARB), only contain emissions factors to 2040. Since no other emissions model is approved for use in conformity determinations by Metropolitan Planning Organizations (MPOs) in California, staff has explored options under the Transportation Conformity Rule to conduct the air quality conformity determination for the 2050 RTP.

Recommendation

The Transportation Committee is asked to:
(1) accept for review and distribution the draft proposed methodology for conducting the air quality conformity determination for the 2050 RTP for a 30-day comment period, and (2) schedule a public hearing to solicit public comments on shortening the conformity timeline and proposed methodology for the regional emissions analysis for the October 15, 2010, Transportation Committee meeting.

Discussion

Background

The U.S. Environmental Protection Agency (EPA) has designated the San Diego air basin as nonattainment for the 1997 8-Hour Ozone standard and as a maintenance area for the Carbon Monoxide (CO) standard. SANDAG and the U.S. Department of Transportation (DOT) must make a determination that the RTP and the Regional Transportation Improvement Program (RTIP) conform to the State Implementation Plan (SIP) for air quality. Conformity to the SIP means that transportation activities will not create new air quality violations, worsen existing violations, or delay the attainment of the national ambient air quality standards.

Conformity Rule Provisions to Shorten the Conformity Timeframe of the RTP

The federal Conformity Rule outlines the process that MPOs must follow in conducting air quality conformity for RTPs. Conformity is a multistep process, which is conducted with interagency consultation through the San Diego Region Conformity Working Group (CWG), which includes staff from the California Air Resources Board, Caltrans, U.S. Department of Transportation, San Diego County Air Pollution Control District, U.S. EPA Region 9, and others.
The air quality conformity analysis utilizes travel data from the SANDAG travel demand model, which is then input into EMFAC to estimate air pollutant emissions for the San Diego region. SANDAG is required to conduct this analysis for various milestone years of the Plan, including the horizon year of the RTP. For the 2050 RTP SANDAG is unable to perform the conformity analysis of the RTP horizon year, as both EMFAC 2007 and EMFAC 2010 only contain emission factors to 2040. The federal Conformity Rule contains provisions for shortening the conformity timeframe for RTPs, which are detailed in Attachment 1.

**Draft Proposed Methodology for Conducting the Air Quality Conformity Determination for the 2050 RTP**

SANDAG staff will conduct the Air Quality Conformity Analysis for the 2050 RTP for 2011 through 2040, with the analysis years of 2018, 2020, 2030, and 2040. SANDAG will prepare a regional emissions analysis (for information purposes only) for 2050. To perform the informational analysis for 2050, SANDAG will use the 2050 travel data from the SANDAG transportation model as input into EMFAC 2007 for the last year of the EMFAC 2007 model (2040).1

SANDAG staff conducted interagency consultation on the proposed methodology with the CWG at its August 4 and September 1, 2010 meetings. The CWG concurred with the proposed methodology.

**Next Steps**

Pending action by the Transportation Committee, the draft proposed methodology for conducting the air quality conformity determination for the 2050 RTP will be distributed for a 30-day public comment period ending on October 18, 2010. A public hearing to solicit public comments on shortening the conformity timeline to 2040 and proposed methodology for the regional emissions analysis will be held at the October 15, 2010, Transportation Committee meeting. Comments received will be incorporated as appropriate. The Board of Directors will be asked to take action on the proposed methodology to conduct the 2050 RTP conformity determination at a future meeting.

CHARLES “MUGGS” STOLL  
Director of Land Use and Transportation Planning

**Attachment:** 1. Draft Proposed Methodology for Conducting the Air Quality Conformity Analysis for the 2050 RTP

Key Staff Contact: Rachel Kennedy, (619) 699-1929, rke@sandag.org

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1 This methodology also would be applied using the EMFAC 2010 model once available.
Draft Proposed Methodology for Conducting the Air Quality Conformity Determination for the 2050 RTP

Introduction

SANDAG is currently developing the 2050 Regional Transportation Plan (RTP), which is anticipated to be adopted in summer 2011 along with its air quality conformity determination. While the horizon year of this RTP is 2050, both the current version of the emissions model approved by the U.S. Environmental Protection Agency (EMFAC 2007) and the new version of the model (EMFAC 2010), which is under development by the California Air Resources Board (CARB), only contain emissions factors to 2040. Since no other emissions model is approved for use in conformity determinations by Metropolitan Planning Organizations in California, SANDAG staff has explored options under the Transportation Conformity Rule to conduct the air quality conformity determination for the 2050 RTP.

San Diego Region Air Quality Designations

The federal Clean Air Act (CAA), which was last amended in 1990, requires the U.S. Environmental Protection Agency to set National Ambient Air Quality Standards (NAAQS) for pollutants considered harmful to public health and the environment. Areas with levels that exceed the standard for specified pollutants are designated as non-attainment areas.

Eight-Hour Ozone

On April 15, 2004, the U.S. Environmental Protection Agency (EPA) designated the San Diego air basin as nonattainment for the 1997 Eight-Hour Ozone Standard. This designation took effect on June 15, 2004. Several areas that are tribal lands in eastern San Diego County were excluded from the nonattainment designation.

The air basin was initially classified as a basic nonattainment area under Subpart 1 of the Clean Air Act and the maximum statutory attainment date for the 8-Hour Ozone Standard was set as June 15, 2009. In response to a court decision, however, on January 16, 2009, U.S. EPA proposed that, among other areas of the country, the San Diego basic nonattainment area will be reclassified as a Subpart 2 moderate nonattainment area, with a maximum statutory attainment date of June 15, 2010. Final EPA action on this proposed reclassification has not been taken.

In cooperation with the San Diego County Air Pollution Control District and SANDAG, the CARB developed an 8-Hour Ozone Attainment Plan which was submitted to the U.S. EPA on June 15, 2007. The budgets in the Eight-Hour Ozone Attainment Plan for San Diego County were found adequate for transportation conformity purposes by the U.S. EPA, effective June 9, 2008.
Carbon Monoxide

In June 1998, the U.S. EPA approved California’s Maintenance Plan for Carbon Monoxide (CO) and redesignated the San Diego air basin as a federal attainment/maintenance area for the CO standard. On November 8, 2004, the CARB submitted to the U.S. EPA the 2004 revision to the California State Implementation Plan (SIP) for CO, which covers the second ten-year maintenance period to 2018. Effective January 30, 2006, the U.S. EPA has approved this maintenance plan as a SIP revision.

Conformity Rule Provisions for Shortening the RTP Timeframe

Eight-Hour Ozone

The San Diego air basin does not have an adequate or approved Maintenance Plan for the 1997 8-Hour Ozone Standard. According to 40 CFR 93.106 (d), for areas that do not have an adequate or approved maintenance plan, the Metropolitan Planning Organization (MPO) may elect to shorten the timeframe of the RTP conformity determination, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments (40 CFR 93.106(d)(2)). The conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan (40 CFR 93.106(d)(2)(ii)).

The shortened timeframe must extend at least to the latest of the following years (40 CFR 93.106(d)(2)(i)):

(A) the tenth year of the transportation plan (for SANDAG, 2021)
(B) The latest year of the adequate emissions budget (for SANDAG, 2008)
(C) The year after completion of a regionally significant project if the project is included in the Transportation Improvement Program (TIP) or the project requires approval before the subsequent conformity determination (for SANDAG, there will be regionally significant projects up to and beyond 2040; the next RTP conformity determination is anticipated in 2015)

Given the availability of EMFAC 2007 and the future EMFAC 2010 emissions factors to 2040, SANDAG only will be able to determine conformity of the 2050 RTP to 2040 as the latest conformity year. A regional emissions analysis for the 8-Hour Ozone Standard will be conducted for regionally significant projects included in the 2050 RTP between 2041 and 2050 for informational purposes.

Carbon Monoxide

The San Diego air basin has an approved Maintenance Plan. According to 40 CFR 93.106 (d)(3), for areas that have an adequate or approved Maintenance Plan, the MPO may elect to shorten the timeframe of the conformity determination to extend through the last year of such maintenance plan, after consultation with state and local air agencies, solicitation of public comments, and consideration of such comments.

For the San Diego air basin, the last year of the CO Maintenance Plan is 2018. U.S. EPA Region 9 staff has consulted with its Office of Transportation and Air Quality and has confirmed that the timeframe could extend beyond the last year of the Maintenance Plan, to 2040 for the 2050 RTP conformity.
SANDAG Proposal for Shortening the Timeframe of the 2050 RTP Conformity Determination

SANDAG staff is proposing to shorten the timeframe of the air quality conformity determination for the 2050 RTP to the year 2040. A regional emissions analysis for the 8-Hour Ozone and Carbon Monoxide standards will be conducted for regionally significant projects included in the 2050 RTP between 2041 and 2050, for informational purposes.

Proposed 2050 RTP Air Quality Conformity Methodology

SANDAG staff will conduct the Air Quality Conformity Analysis for the 2050 RTP 2011 through 2040, with the analysis years of 2018, 2020, 2030, and 2040. SANDAG will prepare a regional emissions analysis (for information purposes only) for 2050. To perform the informational analysis SANDAG will use the 2050 travel data from the SANDAG transportation model as input into EMFAC 2007 for the last year of the EMFAC 2007 model (2040).¹

¹ This methodology also would be applied using the EMFAC 2010 model once available.
Proposed Rule: Transportation Conformity Rule Restructuring Amendments

The U.S. Environmental Protection Agency (EPA) is proposing amendments to the transportation conformity rule.

- EPA is proposing to restructure two sections of the transportation conformity rule so that existing requirements would apply under any new or revised National Ambient Air Quality Standards (NAAQS). This part of the proposal should reduce the need to amend the rule in the future merely to reference a specific NAAQS. These administrative revisions would provide more certainty to transportation planners without compromising environmental benefits.

- EPA is also proposing to make the conformity rule more consistent by requiring that planners analyze a near-term year when using the budget test if the attainment year has already passed or has not yet been established. The budget test demonstrates that total on-road emissions projected for a metropolitan transportation plan (or “TIP”) are within the emissions limits (“budgets”) established by the state air quality implementation plan (or “SIP”).

This proposed rule would ensure that air quality is protected and would clarify requirements for implementers.

EPA has worked closely with the U.S. Department of Transportation to develop this proposed rule.

Background
Transportation conformity is a Clean Air Act requirement that ensures that federally supported highway and transit projects are consistent with state air quality implementation plans. Conformity helps protect public health through early consideration of
the air quality impacts of transportation decisions in places where air quality does not currently meet federal standards or has not met them in the past.

**Key Elements of the Proposed Rule**

The proposed rule restructures two sections of the conformity rule, 40 CFR 93.109 and 93.119, so that the existing rule requirements would clearly apply to areas designated nonattainment for future new or revised NAAQS, thus reducing the need to amend the transportation conformity rule merely to reference specific new NAAQS.

The proposed rule would also require that when the attainment year of a NAAQS has passed or has not yet been established, a near-term year would be analyzed when using the budget test. Specifically, where the attainment year has not yet been established or it is no longer in the timeframe of the transportation plan and conformity determination, areas designated nonattainment or maintenance for a NAAQS would be required to analyze a year no more than five years beyond the year in which the conformity determination is being made.

**Health and Environmental Benefits**

The proposed rule would ensure that transportation activities are consistent with air quality goals of the existing transportation conformity program. The proposed rule would ensure that all NAAQS nonattainment and maintenance areas use conformity tests that ensure that air quality progress continues in areas that need to attain or maintain the NAAQS.

**Public Participation Opportunities**

We welcome your comments on this proposed rule. Comments will be accepted for 30 days beginning when this proposal is published in the Federal Register.

All comments should be identified by Docket ID No. EPA-HQ-OAR-2009-0128 and submitted by one of the following methods:

- **Internet**: [www.regulations.gov](http://www.regulations.gov)
- **E-mail**: a-and-r-docket@epa.gov
- **Fax**: (202) 566-9744
- **Mail**:
  
  Air Docket, Environmental Protection Agency  
  Mail Code: 2822T  
  1200 Pennsylvania Avenue NW  
  Washington, DC 20460

- **Hand Delivery**:  
  EPA West Building  
  EPA Docket Center (Room 3334)  
  1301 Constitution Avenue NW  
  Washington, DC
For More Information
You can access documents on transportation conformity on EPA’s Office of Transportation and Air Quality Web site at:

www.epa.gov/otaq/stateresources/transconf/index.htm

For further information on this proposed rule, please contact
Patty Klavon
U.S. Environmental Protection Agency
Office of Transportation and Air Quality
2000 Traverwood Drive
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Ann Arbor, MI 48105
734-214-4858
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This comparison table is intended to assist readers in understanding how the conformity rule would be amended if all the proposals in the “Transportation Conformity Rule Restructuring Amendments” proposed rule (Docket # EPA-HQ-OAR-2009-0128) are finalized. Sections of the conformity rule that would be amended are included in the table below. The proposed rule would not amend other sections of the transportation conformity rule. Readers should refer to EPA’s conformity regulations at 40 CFR Part 93 for current regulatory requirements, and to the proposed rule for the revisions EPA has proposed to make to the existing regulations.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Existing Section</th>
<th>Description of Existing Provision</th>
<th>Proposed Section</th>
<th>Purpose of Proposed Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions</td>
<td>93.101</td>
<td>Under “NAAQS,” existing paragraphs (1) through (6) identify specific NAAQS: “1-hour ozone NAAQS”, “8-hour ozone NAAQS”, “24-hour PM2.5 NAAQS”, “1997 PM2.5 NAAQS”, “2006 PM2.5 NAAQS”, and “Annual PM10 NAAQS”</td>
<td>93.101</td>
<td>Would remove the definitions for specific NAAQS and would apply to any ozone, CO, NO2, PM2.5 or PM10 NAAQS</td>
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<tr>
<td></td>
<td>93.101</td>
<td>“Clean data” definition</td>
<td>93.101</td>
<td>Would update definition, no substantive change</td>
</tr>
<tr>
<td>Consultation</td>
<td>93.105(c)(1)(vi)</td>
<td>Interagency consultation procedures: Specific processes</td>
<td>93.105(c)(1)(vi)</td>
<td>Would renumber sections; no other changes would be made</td>
</tr>
<tr>
<td>Conformity Tests: Ozone</td>
<td>93.109(c)</td>
<td>1-hour ozone areas</td>
<td>N/A</td>
<td>Would delete an existing section that is no longer applicable. The 1-hour ozone NAAQS has been revoked</td>
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<td></td>
<td>93.109(d)(1)</td>
<td>Use of 8-hour ozone budgets, once adequate or approved</td>
<td>93.109(c)(1)</td>
<td>Would address all NAAQS</td>
</tr>
<tr>
<td></td>
<td>93.109(d)(2)</td>
<td>Use of interim emissions test(s) when no ozone budgets</td>
<td>93.109(c)(3)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>93.109(d)(3)</td>
<td>Use of interim emissions test(s) for NOx when no NOx budget</td>
<td>93.109(c)(4)</td>
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<td></td>
<td>93.109(d)(4)</td>
<td>Tests for areas not required to submit a SIP for ozone areas</td>
<td>93.109(c)(1), (c)(2), (c)(3)</td>
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<tr>
<td>Topic</td>
<td>Existing Section</td>
<td>Description of Existing Provision</td>
<td>Proposed Section</td>
<td>Purpose of Proposed Amendment</td>
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<tr>
<td></td>
<td>93.109(d)(5)</td>
<td>Clean data option for moderate and above ozone areas</td>
<td>93.109(c)(5)</td>
<td>Would expand clean data flexibility to any NAAQS for which EPA has clean data regulations or policies</td>
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<tr>
<td></td>
<td>93.109(e)(1)</td>
<td>Use of 8-hour ozone budgets, once adequate or approved</td>
<td>93.109(c)(1)</td>
<td>Would address all NAAQS</td>
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<tr>
<td></td>
<td>93.109(e)(2)</td>
<td>Use of 1-hour ozone budgets before area has 8-hour ozone budgets</td>
<td>93.109(c)(2)</td>
<td></td>
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<tr>
<td></td>
<td>93.109(e)(3)</td>
<td>Use of interim emissions test(s) when no ozone budgets</td>
<td>93.109(c)(3)</td>
<td></td>
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<tr>
<td></td>
<td>93.109(e)(4)</td>
<td>Clean data option for moderate and above ozone areas</td>
<td>93.109(c)(5)</td>
<td>Would expand clean data flexibility to any NAAQS for which EPA has clean data regulations or policies</td>
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<td>93.109(f)(1)</td>
<td>FHWA/FTA projects in CO areas requiring a hot-spot analysis</td>
<td>93.109(d)(1)</td>
<td>Would include hot-spot conformity test requirements for CO, PM2.5 and PM10 areas</td>
</tr>
<tr>
<td></td>
<td>93.109(f)(2)</td>
<td>Use of CO budgets, once approved or adequate</td>
<td>93.109(c)(1)</td>
<td>Would address all NAAQS</td>
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<tr>
<td></td>
<td>93.109(f)(3)</td>
<td>Use of interim emissions tests when no CO budget</td>
<td>93.109(c)(3)</td>
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<td></td>
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<td>Use of adequate or approved CO budget of another CO NAAQS</td>
<td>93.109(c)(2)</td>
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<td></td>
<td>93.109(f)(4)</td>
<td>Regional conformity tests in CO nonattainment areas that don’t have a maintenance plan and not required to submit an attainment demonstration</td>
<td>93.109(c)(1), (c)(2), (c)(3)</td>
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<td>93.109(g)(1)</td>
<td>FHWA/FTA projects in PM10 areas requiring a hot-spot analysis</td>
<td>93.109(d)(1)</td>
<td>Would include hot-spot conformity test requirements for CO, PM2.5 and PM10 areas</td>
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<tr>
<td></td>
<td>93.109(g)(2)</td>
<td>Use of PM10 budgets, once approved or adequate</td>
<td>93.109(c)(1)</td>
<td>Would address all NAAQS</td>
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<td></td>
<td>93.109(g)(3)</td>
<td>Use of adequate or approved PM10 budget of another PM10 NAAQS</td>
<td>93.109(c)(2)</td>
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<td>Description of Existing Provision</td>
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<td>93.109(g)(4)(i)</td>
<td>Use of interim emissions tests when the area has no PM10 budget</td>
<td>93.109(c)(3)</td>
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<td>93.109(g)(4)(ii)</td>
<td>Use of interim emissions tests if the submitted PM10 SIP is a demonstration of impracticability under CAA 189(a)(1)(B)(ii) and does not demonstrate attainment</td>
<td>93.109(c)(6)</td>
<td>Would include hot-spot conformity test requirements for CO, PM2.5 and PM10 areas</td>
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<td>Conformity</td>
<td>93.109(h)(1)</td>
<td>Use of NO2 budgets, once approved or adequate</td>
<td>93.109(c)(1)</td>
<td>Would address all NAAQS</td>
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<td>Tests: NO2</td>
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<td>Use of adequate or approved NO2 budget of another NO2 NAAQS</td>
<td>93.109(c)(2)</td>
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<td>Use of interim emissions tests when area has no NO2 budget</td>
<td>93.109(c)(3)</td>
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<td>Conformity</td>
<td>93.109(i)(1)</td>
<td>FHWA/FTA projects in 1997 PM2.5 areas requiring a hot-spot analysis</td>
<td>93.109(d)(1)</td>
<td>Would include hot-spot conformity test requirements for CO, PM2.5 and PM10 areas</td>
</tr>
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<td>Tests: PM2.5</td>
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<td>Use of 1997 PM2.5 budgets, once approved or adequate</td>
<td>93.109(c)(1)</td>
<td>Would address all NAAQS</td>
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<td>93.109(i)(3)</td>
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<td>93.109(j)(1);</td>
<td>FHWA/FTA projects in 2006 PM2.5 requiring a hot-spot analysis</td>
<td>93.109(d)(1)</td>
<td>Would include hot-spot conformity test requirements for CO, PM2.5 and PM10 areas</td>
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<tr>
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<td>93.109(c)(1)</td>
<td>Would address all NAAQS</td>
</tr>
<tr>
<td></td>
<td>93.109(j)(3)</td>
<td>Use of interim emissions test</td>
<td>93.109(c)(3)</td>
<td></td>
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<tr>
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<td>93.109(k)(1)</td>
<td>FHWA/FTA projects in 2006 PM2.5 requiring a hot-spot analysis</td>
<td>93.109(d)(1)</td>
<td>Would include hot-spot conformity test requirements for CO, PM2.5 and PM10 areas</td>
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<td>Use of 2006 PM2.5 budgets, once approved or adequate</td>
<td>93.109(c)(1)</td>
<td>Would address all NAAQS</td>
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<td>93.109(k)(3)</td>
<td>Use of 1997 PM2.5 budgets / interim emission test</td>
<td>93.109(c)(3)</td>
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<td>Conformity</td>
<td>93.109(l)</td>
<td>areas with limited maintenance plans</td>
<td>93.109(e)</td>
<td>Would renumber sections; no other</td>
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<td>Existing Section</td>
<td>Description of Existing Provision</td>
<td>Proposed Section</td>
<td>Purpose of Proposed Amendment</td>
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<tr>
<td>tests in ...</td>
<td>93.109(m)</td>
<td>areas with insignificant motor vehicle emissions</td>
<td>93.109(f)</td>
<td>changes would be made</td>
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<td></td>
<td>93.109(n)</td>
<td>isolated rural nonattainment and maintenance areas</td>
<td>93.109(g)</td>
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<td>Hot-spot tests in...</td>
<td>93.116(b)</td>
<td>CO areas without an approved attainment or maintenance plan</td>
<td>93.116(b)</td>
<td>Would update references; no other changes would be made</td>
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<td>Budget test</td>
<td>93.118(b)</td>
<td>Requires consistency with budgets for:</td>
<td>93.118(b) (Same as existing)</td>
<td>Would require consistency with budgets for:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- budget years</td>
<td></td>
<td>- budget years, and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- attainment year</td>
<td></td>
<td>- each year that a regional emissions analysis is done per proposed §93.118(d)</td>
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<td></td>
<td>- last year of transportation plan/conformity determination</td>
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<td></td>
<td>93.118(d)</td>
<td>Requires regional emissions analysis for:</td>
<td>93.118(d) (Same as existing)</td>
<td>In addition to current requirements, if the area’s attainment year has passed, or has not been established, the first analysis year would be no more than five years beyond the year in which conformity determination is being made.</td>
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<tr>
<td>Interim Emissions Tests</td>
<td>93.119(b)</td>
<td>ozone areas</td>
<td>93.119(b)</td>
<td>Would remove specific baseline years and move the definition for “baseline year” to proposed 93.119(e)</td>
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<td></td>
<td>93.119(c)</td>
<td>CO areas</td>
<td>93.119(c)</td>
<td></td>
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<tr>
<td></td>
<td>93.119(d)</td>
<td>PM10 and NO2 areas</td>
<td>93.119(d)</td>
<td>Would combine existing 93.119(d) and (e) into (d).</td>
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<tr>
<td></td>
<td>93.119(e)</td>
<td>PM2.5 areas</td>
<td>93.119(d)</td>
<td>Would remove specific baseline years and move the definition for “baseline year” to proposed 93.119(e)</td>
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<td>Baseline Year for baseline</td>
<td>93.119(b)(1)(ii)(A)</td>
<td>1-hour ozone areas</td>
<td>N/A</td>
<td>Would delete existing section. The 1-hour ozone NAAQS has been</td>
</tr>
<tr>
<td>Topic</td>
<td>Existing Section</td>
<td>Description of Existing Provision</td>
<td>Proposed Section</td>
<td>Purpose of Proposed Amendment</td>
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<td>------------</td>
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<td>--------------------------------------------------------------------------------------------------</td>
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<td>------------------------------------------------------------------------------------------------</td>
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<tr>
<td>year test in ...</td>
<td>93.119(b)(2)</td>
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<td>(ii)(A)</td>
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<td>93.119(b)(2)</td>
<td>marginal and below ozone areas not subject to RFP requirements</td>
<td>93.119(b)</td>
<td>Future baseline years would be defined as proposed in 93.119(e)(4), which is based on existing regulatory text in 93.119(e)(2)(B)</td>
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<td>93.119(e)(3)</td>
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<td>Not applicable any future ozone areas</td>
<td>93.119(b)</td>
<td>Future baseline years would be defined as proposed in 93.119(e)(4), which is based on existing regulatory text in 93.119(e)(2)(B)</td>
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<td>93.119(c)(1)(ii)</td>
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<td>93.119(c)(1)(ii); 93.119(e)(1)</td>
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<td>1990 moderate CO areas with a design value less than 12.7ppm and not classified CO areas</td>
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<td>93.119(d)(2)</td>
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<td>Proposed Section</td>
<td>Purpose of Proposed Amendment</td>
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<td>on existing regulatory text in 93.119(e)(2)(B)</td>
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<td>1997 PM2.5 areas</td>
<td></td>
<td>93.119(d)(2)</td>
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<td>2006 PM2.5 areas and any future PM2.5 areas</td>
<td></td>
<td>93.119(d)(2)</td>
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<td>93.119(e)(4)</td>
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<td>Non-federal projects in…</td>
<td>93.121(b)</td>
<td>isolated rural nonattainment and maintenance areas</td>
<td>93.121(b)</td>
<td>Would update references; no other changes would be made</td>
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<tr>
<td></td>
<td>93.121(c)</td>
<td>areas with limited maintenance plans and areas with insignificant motor vehicle emissions</td>
<td>93.121(c)</td>
<td>Would update references; no other changes would be made</td>
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</table>
§ 222.183 How does an LEA apply for a grant?

(a) To apply for funds under this program, an LEA may submit only one application for one educational facility for each competition.

* * * * *

[FR Doc. 2010–20065 Filed 8–12–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93


RIN 2060–AP57

Transportation Conformity Rule Restructuring Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to restructure several sections of the transportation conformity rule so that they would apply to any new or revised National Ambient Air Quality Standards (NAAQS) that are established in the future for transportation-related criteria pollutants. This proposal should reduce the need to amend the rule in the future for the sole purpose of referencing specific new or revised NAAQS. EPA is also proposing in this action that a near-term year would have to be analyzed when using the budget test when an area’s attainment date has passed, or when an area’s attainment date has not yet been established. The budget test demonstrates that the total on-road emissions projected for a metropolitan transportation plan or TIP are within the emissions limits (“budgets”) established by the state air quality implementation plan (“SIP”). This action also includes several administrative proposals and clarifications to improve implementation of the rule.

The Clean Air Act (CAA) requires federally supported transportation plans, transportation improvement programs, and projects to be consistent with (“conform to”) the purpose of the state air quality implementation plan. The U.S. Department of Transportation (DOT) is EPA’s Federal partner in implementing the transportation conformity regulation. EPA has consulted with DOT, and they concur with this proposed rule.

DATES: Written comments on this proposal must be received on or before September 13, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0128, by one of the following methods:

• http://www.regulations.gov: Follow the online instructions for submitting comments.
• E-mail: a-and-r-docket@epa.gov.
• Fax: (202) 566–9744.

• Hand Delivery: Air Docket, Environmental Protection Agency: EPA West Building, EPA Docket Center (Room 3334), 1301 Constitution Ave., NW, Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2009–0128. Please include two copies. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0128. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at http://www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through http://www.regulations.gov or e-mail. The http://www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through http://www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm. For additional instructions on submitting comments, go to Section I. of the SUPPLEMENTARY INFORMATION section of this document.

Docket: All documents in the docket are listed in the http://www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in http://www.regulations.gov or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Patty Klavon, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, e-mail address: klavon.patty@epa.gov, telephone number: (734) 214–4476, fax number: (734) 214–4052; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, e-mail address: berry.laura@epa.gov, telephone number: (734) 214–4858, fax number: (734) 214–4052.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. General Information
II. Background on the Transportation Conformity Rule
III. Restructure of 40 CFR 93.109
IV. Additional Option for Areas That Qualify for EPA’s Clean Data Regulations or Policies
V. Baseline Year for Certain Nonattainment Areas
VI. Transportation Conformity Requirements for Secondary NAAQS
VII. Analysis of a Near-Term Year in the Budget Test
VIII. How does this proposal affect conformity SIPs?
IX. Statutory and Executive Order Reviews

27
I. General Information

A. Does this action apply to me?

Entities potentially regulated by the transportation conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. chapter 53. Regulated categories and entities affected by today’s action include:

<table>
<thead>
<tr>
<th>Category</th>
<th>Examples of regulated entities</th>
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</thead>
<tbody>
<tr>
<td>Local government</td>
<td>Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).</td>
</tr>
<tr>
<td>State government</td>
<td>State transportation and air quality agencies.</td>
</tr>
<tr>
<td>Federal government</td>
<td>Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).</td>
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</tbody>
</table>

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposal. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding FOR FURTHER INFORMATION CONTACT section.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI

Do not submit this information to EPA through http://www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may be required to pay a reasonable fee for copying docket materials.

C. How do I get copies of this proposed rule and other documents?

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OAR–2009–0128. You can get a paper copy of this Federal Register document, as well as the documents specifically referenced in this action, any public comments received, and other information related to this action at the official public docket. See the ADDRESSES section for its location.

2. Electronic Access

You may access this Federal Register document electronically through EPA’s Transportation Conformity Web site at http://www.epa.gov/otaq/stateresources/transconf/index.htm. You may also access this document electronically under the Federal Register listings at http://www.epa.gov/fedrgstr/. An electronic version of the official public docket is available through http://www.regulations.gov. You may use http://www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the appropriate docket identification number.

Certain types of information will not be placed in the electronic public docket. Information claimed as CBI and other information for which disclosure is restricted by statute is not available for public viewing in the electronic public docket. EPA’s policy is that copyrighted material will not be placed in the electronic public docket but will be available only in printed, paper form in the official public docket.

To the extent feasible, publicly available docket materials will be made available in the electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the document facility identified in the ADDRESSES section. EPA intends to provide electronic access in the future to all of the publicly available docket materials through the electronic public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in the electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the electronic public docket along with a brief description written by the docket staff.

For additional information about the electronic public docket, visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm.
II. Background on the Transportation Conformity Rule

A. What is transportation conformity?

Transportation conformity is required under Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects are consistent with (“conform to”) the purpose of the state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment or achievement of interim emission reductions or milestones of the relevant NAAQS. Transportation conformity (hereafter, “conformity”) applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 (“maintenance areas”) for transportation-related criteria pollutants: Carbon monoxide (CO), ozone, nitrogen dioxide (NO₂) and particulate matter (PM₂.5 and PM₁₀).¹

EPA’s conformity rule (40 CFR parts 51 and 93) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several other amendments. DOT is EPA’s Federal partner in implementing the conformity regulation. EPA has consulted with DOT; and they concur with this proposed rule.

B. Why are we issuing this proposed rule?

EPA has already undertaken two conformity rulemakings primarily for the purpose of addressing a new or revised NAAQS. See the March 24, 2010 final rule and the July 1, 2004 final rule (75 FR 14260, and 69 FR 40004, respectively). Due to other CAA requirements, EPA will continue to establish new or revised NAAQS in the future. Therefore, EPA is proposing to restructure two sections of the conformity rule, 40 CFR 93.109 and 93.119, and is proposing minor changes for definitions in 40 CFR 93.101, so that the rule’s requirements would clearly apply to areas designated for future new or revised NAAQS. These proposed changes are intended to minimize the need to make administrative updates to the conformity rule merely to reference a specific new or revised NAAQS. EPA believes that these proposed revisions would provide more certainty to implementers without compromising air quality benefits from the current program. These proposed changes are found in Sections III. and V. of today’s proposal.

EPA is also proposing to clarify the additional conformity test option currently available to nonattainment areas that meet the criteria of EPA’s clean data ² regulations or policies for certain NAAQS, and to extend that flexibility to any nonattainment areas covered by such a regulation or policy. See Section IV. of today’s proposal for further details. EPA is also clarifying that conformity requirements apply in areas designated nonattainment or maintenance for a transportation-related secondary NAAQS. See Section VI. for further information.

In addition, EPA is proposing that a near-term year would have to be analyzed when using the budget test when an area’s attainment date has passed, or when an area’s attainment date has not yet been established. The budget test demonstrates that the total on-road emissions projected for a metropolitan transportation plan or TIP are within the emissions limits (“budgets”) established by the state air quality implementation plan (“SIP”). Section VII. of this preamble describes this issue and EPA’s proposed change for budget test analysis years. Finally, Section VIII. covers how today’s proposal affects conformity SIPs.³ Two recent actions are useful background for today’s proposed rule. In the March 24, 2010 Transportation Conformity Rule PM₂.5 and PM₁₀ Amendments (“PM Amendments”) rulemaking, EPA provided conformity procedures for state and local agencies in areas that are designated nonattainment for the 2006 24-hour PM₂.5 NAAQS (“2006 PM₂.5 NAAQS”) (75 FR 14260). The other rulemaking that provides useful background is the final rule EPA published on July 1, 2004 (69 FR 40004). In this rulemaking, EPA provided conformity procedures for state and local agencies under the 8-hour ozone and PM₂.5 NAAQS (or “1997 ozone” and “1997 PM₂.5” NAAQS, respectively).⁴ See EPA’s Web site at http://www.epa.gov/otaq/statesresources/transport/index.htm for further information about any of EPA’s transportation conformity rulemakings.⁵

III. Restructure of 40 CFR 93.109

A. Overview

Conformity determinations for transportation plans, TIPs, and projects not from a conforming transportation plan and TIP must include a regional emissions analysis that fulfills CAA requirements. The conformity rule provides for several different regional conformity tests that satisfy statutory requirements in different situations. Once a SIP with a motor vehicle emissions budget (“budget”) is submitted for a NAAQS and EPA finds the budget adequate for conformity purposes or approves it as part of the SIP, conformity must be demonstrated using the budget test for that pollutant or precursor, as described in 40 CFR 93.118.

EPA has amended the conformity rule on two prior occasions to address a new or revised NAAQS. In the July 1, 2004 final rule (69 FR 40004), EPA amended 40 CFR 93.109 by adding new paragraphs to describe the regional conformity tests for the 1997 ozone areas that do not have 1-hour ozone budgets, 1997 ozone areas that have 1-hour ozone budgets, and 1997 PM₂.5 areas. Also, in the March 24, 2010 PM Amendments final rule (75 FR 14260), EPA amended 40 CFR 93.109 again by adding two new paragraphs to describe the regional conformity tests for 2006 PM₂.5 areas without 1997 PM₂.5 budgets, and 2006 PM₂.5 areas that have 1997 PM₂.5 budgets. EPA believes it would be useful to restructure 40 CFR 93.109 to eliminate repetition and reduce the need to update the rule each time a NAAQS is promulgated. The same hierarchy of conformity tests as described below in B. of this section generally applies to all areas where conformity is required, and for the reasons described below, EPA believes it would apply to all future areas, regardless of pollutant or NAAQS. Given that CAA section 109(d)(1) requires EPA to revisit the NAAQS for criteria pollutants at least every five years.

¹ 40 CFR 93.102(b)(1) defines PM₂.5 and PM₁₀ as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

² Clean data refers to air quality monitoring data determined by EPA to indicate attainment of the NAAQS. Note that we are proposing a minor change to the existing definition of clean data found in 40 CFR 93.101, see Section IV. of today’s notice.

³ The transportation conformity SIP includes a state’s specific criteria and procedures for certain aspects of the transportation conformity process. For more information about transportation conformity SIPs, see EPA’s “Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)”, (EPA–420–B–09–001, January 2009).

⁴ The July 1, 2004 final rule described regional conformity tests for areas designated nonattainment or maintenance for the 8-hour ozone NAAQS codified at 40 CFR 50.10 and for areas designated nonattainment or maintenance for the PM₂.5 NAAQS codified at 40 CFR 50.7.

⁵ At this Web site, click on “Regulations” to find all of EPA’s proposed and final rules as well the current transportation conformity regulations.
years, and that EPA is in the process of considering revisions to other NAAQS per this requirement, EPA anticipates other NAAQS revisions will be made in the future that will be subject to conformity requirements.

In the existing conformity regulation, 40 CFR 93.109 includes nine paragraphs, (c) through (k), one for each of the various types of nonattainment and maintenance areas. Each of these paragraphs contains the requirements that apply for that specific pollutant, NAAQS, and/or area boundary scenario, but each paragraph’s requirements are consistent with the hierarchy of regional conformity tests described below in B. of this section. Therefore, there is redundancy in 40 CFR 93.109 as it currently exists.

B. Proposal

Today, EPA is proposing to restructure this section to provide the requirements for regional conformity tests in one paragraph, and project-level conformity tests in another. Under today’s proposal, existing paragraphs (c) through (k) would be replaced with two paragraphs:

- Regional conformity tests, which would be covered by newly proposed paragraph § 93.109(c); and,
- Project-level conformity tests, which would be covered by newly proposed paragraph § 93.109(d).

EPA is not proposing substantive changes to this section of the conformity rule; therefore, we are taking comments only on the proposed restructuring of 40 CFR 93.109, not on the underlying requirements of the regulation.

New paragraph (c). Under today’s proposal, § 93.109(c) would include requirements for using the budget test and/or interim emissions tests in the same manner as in the existing regulation. That is, the following general hierarchy of regional conformity tests that is found in the existing regulations would be retained by the new structure:

- First, a nonattainment or maintenance area for a specific NAAQS must use the budget test, if the area has budgets from an adequate or approved SIP for that specific NAAQS (proposed § 93.109(c)(1)). For example, once a 2010 ozone nonattainment or maintenance area has adequate or approved SIP budgets for the 2010 ozone NAAQS, it would use those budgets for the budget test as the regional test of conformity;
- Second, if an area does not have such budgets but has budgets from an adequate or approved SIP that addresses a different NAAQS, the SIP in question is to use the NAAQS for the same criteria pollutant, these budgets must be used in the budget test. Where such budgets do not cover the entire area, the interim emissions test(s) may also have to be used (proposed § 93.109(c)(2)). For example, before a 2010 ozone area has adequate or approved budgets for the 2010 ozone NAAQS, it would use the budget test, using budgets from an adequate or approved SIP for an earlier ozone NAAQS, if it has them. If these budgets do not cover the entire 2010 ozone area, the interim emissions test(s) may also have to be used;
- Third, if an area has no adequate or approved budgets for that criteria pollutant at all, it must use the interim emissions test(s), as described in 40 CFR 93.119 (proposed § 93.109(c)(3)). For example, if a 2010 ozone area has no adequate or approved budgets for any ozone NAAQS, it would use the interim emissions test(s), as described in 40 CFR 93.119.

All of the requirements and flexibilities in the existing rule that apply for regional conformity tests for specific pollutants would be retained in proposed § 93.109(c)(4) and (c)(6). In addition, EPA is proposing to expand the clean data conformity option in 40 CFR 93.109(c)(5), (d)(5) and (e)(4) to all clean data areas for which EPA has a clean data regulation or policy (proposed § 93.109(c)(5)). See Section IV. below for further information.

New paragraph (d). With regard to project-level requirements, today’s proposed paragraph § 93.109(d) places the existing rule’s requirements for hotspot analyses of projects in CO, PM10, and PM2.5 nonattainment and maintenance areas together in one paragraph (proposed § 93.109(d)(1), (2), and (3)). These requirements would be unchanged from the existing regulation.8

Related proposed amendments to 40 CFR 93.101. EPA also proposes to remove the definitions for “1-hour ozone NAAQS”, “8-hour ozone NAAQS”, “24-hour PM10 NAAQS”, “1997 PM2.5 NAAQS”, “2006 PM2.5 NAAQS”, and “Annual PM2.5 NAAQS” found in 40 CFR 93.101 of the conformity rule. Under today’s proposed reconstruction of 40 CFR 93.109, these definitions would no longer be necessary because the proposed regulatory text for 40 CFR 93.109 would apply for any and all NAAQS of a pollutant for which conformity applies.

C. Rationale for Restructuring of § 93.109

EPA believes that section 93.109 of the conformity rule can be restructured because a recent court decision has already established the legal parameters for regional conformity tests. In Environmental Defense v. EPA, 467 F.3d 1329 (DC Cir. 2006), the Court of Appeals for the District of Columbia Circuit held that where a motor vehicle emissions budget developed for the revoked 1-hour ozone NAAQS existed in an approved SIP, that budget must be used to demonstrate conformity to the 8-hour ozone NAAQS until the SIP is revised to include budgets for the new (or revised) NAAQS. EPA incorporated the court’s decision for ozone conformity tests in its January 24, 2008 final rule (73 FR 4434). While the Environmental Defense case concerned ozone, EPA believes the court’s holding is relevant for other pollutants for which conformity must be demonstrated. Consequently, EPA believes that the hierarchy of regional conformity tests described above, which is already found in the existing rule for 8-hour ozone and 2006 PM2.5 areas, would apply for any NAAQS of a pollutant for which conformity applies.

Today’s proposed restructuring would reduce the likelihood that EPA would have to amend the conformity rule when new or revised NAAQS are promulgated, which would have several benefits. First, implementers would know the requirements for regional conformity tests for any potential area designated nonattainment for a new or revised NAAQS, even before such area’s designation. Thus, implementers may have more time to determine conformity of a transportation plan and TIP and would not need to wait for any additional conformity rulemaking from EPA. Second, reducing the need to amend the conformity regulation each time a NAAQS change is made would save government resources and taxpayer dollars and also reduce stakeholder effort needed to keep track of regulatory changes.

EPA’s proposed changes to 40 CFR 93.109, along with today’s proposed elimination of definitions in 40 CFR 93.101 and proposed changes for the baseline year in 40 CFR 93.119 (see Section V.), should make the rule sufficiently flexible to cover most future NAAQS changes, such as promulgation
of a new or revised NAAQS or revocation of a NAAQS. EPA is not proposing to revise regional conformity test requirements in 40 CFR 93.109 or hot-spot analyses requirements for existing areas and is therefore not seeking comment on these requirements in existing areas. Further, today’s proposal is consistent with the regional conformity test requirements for 2006 PM$_{2.5}$ areas and PM$_{10}$ areas described in the March 24, 2010 PM Amendments final rule. The rationale for the required regional tests has been described in previous rulemakings as well. The rationale for the requirements for project-level conformity tests in CO, PM$_{2.5}$, and PM$_{10}$ areas has also been described in previous rulemakings, and EPA is not proposing to revise and is therefore not seeking comment on those requirements.

Request for comments. While EPA believes today’s changes proposed for 40 CFR 93.109 are clear and concise, we also recognize that there could be other ways to structure this section to achieve the same result of accommodating the promulgation of future NAAQS. For example, another possible structure for this section could be to create separate paragraphs containing the conformity tests required for each of the pollutants for which conformity applies: Ozone, CO, PM$_{10}$, PM$_{2.5}$, and NO$_{2}$. Under this alternative structure, the requirements for each pollutant would be wholly contained in one specific paragraph but the same requirements for regional conformity tests would be repeated five times in the regulatory text.

EPA is specifically seeking comment on the overall organization of this section, whether it be (1) By regional conformity test and project-level test requirements as in today’s proposed regulatory text, (2) by each of the five pollutants for which conformity applies, or (3) by another method that achieves the goals described in today’s proposal to restructure the conformity provisions in this section, without affecting the substantive requirements of the regulations. EPA requests that commenters provide the reasons for their preferences if possible, as these reasons are especially valuable to EPA in making a final decision. Where commenters recommend an alternative structure, please provide example text.

IV. Additional Option for Areas That Qualify for EPA’s Clean Data Regulations or Policies

A. Overview

Currently, sections 93.109(c)(5), (d)(5), and (e)(4) of the conformity rule provide an additional regional conformity test option for moderate and above 1-hour and 8-hour ozone nonattainment areas that meet the criteria of EPA’s existing clean data regulation and policy. Today’s conformity proposal would clarify this flexibility and extend this flexibility to any nonattainment areas that are covered by EPA’s clean data regulations or clean data policies. Most recent year of clean data as the motor vehicle emissions budget(s) rather than using the interim emissions test(s)

for 40 CFR 93.119 if the following are true:

- The state or local air quality agency requests that budgets be established in conjunction with EPA’s determination of attainment (Clean Data) rulemaking for the respective NAAQS, and EPA approves the request; and,

- These areas have not submitted a maintenance plan for the respective NAAQS and EPA has determined that these areas are not subject to the CAA reasonable further progress and attainment demonstration requirements for the respective NAAQS.

Otherwise, clean data areas for a relevant NAAQS must complete a regional conformity analysis using either the budget test if they have adequate or approved budgets (per 40 CFR 93.109 and 93.118), or the interim test(s) per 40 CFR 93.119 if they do not have adequate or approved budgets.

The proposed regulatory text for this flexibility is found in § 93.109(c)(5), and would clarify that the state or local air quality agency would have to make the request that the emissions in the most recent year for which the area is attaining (i.e., the most recent year that the area has “clean data”) be used as budgets, and that EPA would have to approve that request. These steps are in the current regulation; today’s proposed regulatory text would simply make them more explicit and would extend them to any nonattainment area covered by EPA’s clean data regulations or policies.

EPA is also proposing to update the definition of “clean data” in 40 CFR 93.101 to describe this term more accurately. The updated definition would reference the appropriate requirements at 40 CFR part 50, as well as part 58. The reference to 40 CFR part 58 is included in the existing definition.

We are seeking comments on the proposal to extend this flexibility to use clean data budgets for any NAAQS for which EPA has a clean data regulation or policy. We are not seeking comments on the existing clean data regulation and policy and how they currently apply to ozone nonattainment areas under the conformity rule.

C. Rationale

Today’s proposed clarification for clean data areas is consistent with the current conformity rule. Options for conformity tests for clean data areas remain the same, although today’s proposal would extend the additional flexibility to use clean data budgets to any nonattainment areas where EPA determines a clean data regulation or policy for the relevant NAAQS. The regulatory text for this proposal is found
in proposed § 93.109(c)(5), which would apply to areas designated for any NAAQS.

EPA believes that nonattainment areas that EPA has determined to be attaining a NAAQS (clean data areas) for which EPA has developed a clean data regulation or policy should be extended the same flexibility that the current conformity rule provides to moderate and above 1-hour and 8-hour ozone areas that qualify for EPA’s ozone clean data regulation and policy. See EPA’s previous discussion and rationale for the clean data conformity option in the preamble to the 1996 conformity proposal and 1997 final rule (July 9, 1996, 61 FR 36116, and August 15, 1997, 62 FR 43785, respectively).

For further details on EPA’s clean data regulations and policies, please refer to the July 1, 2004 final rule (69 FR 40019–40020). See also EPA’s November 29, 2005 Phase 2 Ozone Implementation rulemaking for the 1997 ozone NAAQS (70 FR 71644–71646), 40 CFR 51.918, and EPA’s April 25, 2007 Clean Air Fine Particle Implementation Rule for the 1997 PM2.5 NAAQS (72 FR 20603–20605). See also the October 30, 2006 final rule (71 FR 63642), the February 8, 2006 final rule (71 FR 6352) and the March 14, 2006 final rule (71 FR 13021) determinations of attainment for various PM2.5 nonattainment areas using EPA’s Clean Data policy.

V. Baseline Year for Certain Nonattainment Areas

A. Overview

Before an adequate or approved SIP budget is available, conformity for the transportation plan, TIP, or project not from a conforming transportation plan and TIP is demonstrated with one or both of the interim emissions tests, as described in 40 CFR 93.119. The interim emissions tests include different forms of the “build/no-build” test and “baseline year” test. In general, the baseline year test compares emissions from the planned transportation system to emissions that occurred in the relevant baseline year. The build/no-build test compares emissions from the planned (or “build”) transportation system with the existing (or “no-build”) transportation system in the analysis year. Because EPA has amended this section of the conformity rule two times in the past to add a baseline year for new or revised NAAQS (See Section II.B. of today’s proposal for details), EPA is proposing today to revise 40 CFR 93.119 to apply more generally to any NAAQS, rather than updating this section of the conformity rule to address a specific NAAQS.

B. Proposal

EPA is proposing to revise 40 CFR 93.119 to define the baseline year by reference to another requirement. Rather than naming a specific year, EPA is proposing to define the baseline year for conformity purposes as the most recent year for which EPA’s Air Emissions Reporting Requirements (AERR) (40 CFR 51.30(b)) requires submission of on-road mobile source emissions inventories, as of the effective date of EPA’s nonattainment designations for any NAAQS promulgated after 1997.

EPA requires on-road mobile source emission inventories to be submitted for every third year, for example, 2002, 2005, 2008, 2011, etc. This proposed definition establishes the baseline year for conformity purposes for any areas designated nonattainment for a NAAQS that EPA promulgated after 1997. This has already been done for areas designated nonattainment for the 2006 PM2.5 NAAQS, which was promulgated on October 17, 2006 (71 FR 61144). See the March 24, 2010 PM Amendments final rule (75 FR 14265–14266) for further details. Today’s proposed definition is consistent with Option 2 which was finalized for the 2006 PM2.5 NAAQS in the PM Amendments final rule, except that in the PM Amendments final rule, this definition applies only to areas designated for a PM2.5 NAAQS other than the 1997 PM2.5 NAAQS. Today’s proposal would apply more generally, for any new or revised NAAQS of any pollutant promulgated after 1997, not just the PM2.5 NAAQS. Therefore, for any future NAAQS changes, the conformity rule would not have to be amended merely to establish a new baseline year for conformity purposes; this proposed definition would automatically establish a relevant baseline year. For all future NAAQS, EPA would identify the baseline year that results from today’s proposed definition for implementers in guidance and maintain a list of baseline years on EPA’s Web site. Once the baseline year is established according to this provision, it would not change (i.e., the baseline year would not be a rolling baseline year for a given NAAQS).

Today’s proposal would not change the nonpoint, and mobile source emissions inventories are likely to be under development at the same time as these conformity determinations, and such inventories must be based on the latest available data at the time they are developed (CAA section 172(c)(3)).

C. Rationale

EPA believes that today’s proposed definition for the baseline year is appropriate for meeting CAA conformity requirements for nonattainment areas and is environmentally protective.

Coordinating the conformity baseline year with the year used for SIP planning and an emissions inventory year was EPA’s rationale for using 2002 as the baseline year for conformity tests in nonattainment areas for the 1997 ozone NAAQS. As described in the July 1, 2004 final rule (69 FR 40015), EPA selected 2002 as the conformity baseline year because 2002 was identified as the anticipated emissions inventory base year for the SIP planning process under the 1997 ozone NAAQS. EPA continues to believe that coordinating the baseline year for interim emissions tests with other data collection and inventory requirements would allow state and local governments to use their...
resources more efficiently. EPA also believes it would be important to coordinate the conformity rule’s baseline year with a year that is consistent with emission inventory requirements, which will most likely be consistent with the year ultimately used as a baseline for SIP planning for a particular NAAQS as well.

Because the CAA requires EPA to review the NAAQS for possible revision once every five years, the existing conformity rule as structured requires EPA to update the conformity rule to establish a baseline every time a new or revised NAAQS is promulgated. Therefore, EPA is proposing to generalize the language for the baseline year for areas designated under any NAAQS established after 1997. Adopting this proposal would standardize the process for selecting an appropriate baseline year to use in meeting conformity requirements before SIP budgets have been established for any NAAQS promulgated in the future. Today’s baseline year definition provides implementers with knowledge of the baseline year for any NAAQS promulgated after 1997 upon the effective date of nonattainment designations for that NAAQS, without having to wait for EPA to amend the conformity rule. As a result, MPOs and other implementers would understand conformity requirements for future NAAQS revisions more quickly, which may, in turn, enable them to fully utilize the 12-month conformity grace period to complete conformity determinations for new nonattainment areas.

EPA believes that generalizing the baseline year in the conformity rule would result in an appropriate baseline year for any given NAAQS. This proposed amendment to the conformity rule is based on criteria that have been used for establishing specific baseline years for other NAAQS (58 FR 62191, 69 FR 40014). Therefore, EPA believes that generalizing the baseline year would continue to result in an environmentally protective and appropriate baseline year for conformity under any future NAAQS revisions and is consistent with how conformity has been implemented for new or revised NAAQS in the past.

VI. Transportation Conformity Requirements for Secondary NAAQS

Based on the CAA conformity provisions, the existing conformity rule, and today’s proposal, conformity requirements must be met for all transportation-related criteria pollutants and NAAQS. All of the transportation-related criteria pollutants except CO have a primary NAAQS and a secondary NAAQS. The primary NAAQS protects public health. The secondary NAAQS prevents unacceptable effects on the public welfare, *e.g.*, unacceptable damage to crops and vegetation, buildings and property, and ecosystems (CAA section 109(b)(2)).

CAA section 176(c)(1)(A) states that conformity to a SIP means “conformity to an implementation plan’s purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards * * *.” In other words, because the CAA refers to the NAAQS without qualifying them, conformity applies to both the primary and secondary NAAQS for transportation-related criteria pollutants.

EPA has historically set the secondary NAAQS at the same level as the relevant primary NAAQS for transportation-related criteria pollutants (*i.e.*, PM, ozone, nitrogen dioxide). Hence, the conformity rule has not needed to address requirements specifically for areas designated nonattainment only for a secondary NAAQS or designated for both a primary and a different secondary NAAQS for the same pollutant.

However, for example, in its January 19, 2010 (75 FR 2938) proposal to revise the ozone NAAQS, EPA proposed a secondary ozone NAAQS that, if finalized as proposed, would be distinct from the primary ozone NAAQS that was proposed. It is also possible that in the future EPA will propose to establish distinct secondary NAAQS for other transportation-related criteria pollutants.

Because a secondary NAAQS may not have a specified attainment year which is required to be analyzed, EPA is proposing in Section VII of today’s proposal to address analysis year requirements for areas without an established attainment date. EPA would issue guidance as needed to assist areas in implementing conformity requirements for new NAAQS, including any secondary NAAQS for the 2010 ozone NAAQS, if applicable.

- This may occur in areas designated nonattainment for a secondary NAAQS which is different from the primary NAAQS. The CAA does not specify an attainment date for such areas. CAA section 172(a)(2)(B) specifies that “[t]he attainment date for an area designated nonattainment with respect to a secondary [NAAQS] shall be the date by which attainment can be achieved as expeditiously as practicable after the date such an area was designated under section 107(d).” For transportation conformity purposes, an attainment date would be established when an attainment demonstration is submitted and SIP budgets are found adequate through the adequacy process or approved through the SIP approval process.

VII. Analysis of a Near-Term Year in the Budget Test

A. Existing Requirements for Analysis Years

As described earlier, conformity determinations for transportation plans and TIPs include a regional emissions analysis for the budget test and/or interim emissions test, whichever applies in a given area. When these tests are performed, state and local agencies are not required to examine the emissions impacts of every year within the timeframe of the transportation plan. Rather, the conformity rule requires that only certain years be analyzed (40 CFR 93.118(d)) to understand the emissions impacts of planned transportation activities over the timeframe of the entire transportation plan and conformity determination. Emissions in these analysis years must be consistent with budgets, as required by 40 CFR 93.118(b).

Analysis years are those years for which a regional emissions analysis that meets the requirements of 40 CFR 93.110, 93.111, and 93.122 must be run. The analysis year requirements in the existing conformity rule differ slightly between the budget test and the interim emissions tests. The existing rule at 40 CFR 93.118(d)(2) requires the following years to be analyzed when the budget test is used:

- The attainment year, if it is within the timeframe of the transportation plan and conformity determination;
- The last year of the timeframe of the conformity determination (as described in 40 CFR 93.106(d)); and
- Intermediate years as necessary, so that analysis years are no more than ten years apart.

Under this existing set of analysis years, once the attainment year has passed, or when the attainment year is not yet established, there is no requirement to analyze a near-term year. In contrast, the existing rule at 40 CFR 93.119(g)(1) addressing the interim emissions tests requires that a near-term year always be analyzed. Specifically, when performing the interim emissions tests, a year not more than five years beyond the year in which the conformity determination is being made must be analyzed, in addition to the last year of the transportation plan/conformity determination and intermediate years.

B. Proposal

EPA proposes that when the attainment year has passed, or when an area’s attainment date has not been
established, a near-term year would have to be analyzed when using the budget test. For these cases, EPA proposes to amend 40 CFR 93.118(d)(2) to require areas to analyze a year no more than five years beyond the year in which the conformity determination is being made. This proposal would not affect budget test analysis year requirements where the attainment year for a given NAAQS is within the timeframe of the transportation plan and conformity determination.

An example may help illustrate today's proposal. Current 1997 ozone areas that are classified as moderate are required to demonstrate attainment in the year 2009. Suppose one of these areas is demonstrating conformity in the year 2010 for a transportation plan that covers the years 2010 through 2030. Under the current conformity rule, the budget test for such an area would be required to be performed, at a minimum, for the years 2020 and 2030. An analysis of the attainment year would not be required under the current conformity rule since the attainment year would no longer be in the timeframe of the transportation plan. Today's proposal would add an analysis year to this example by requiring that an analysis year be chosen that is no more than five years beyond 2010 (the year the conformity determination is being done) but within the timeframe of the transportation plan, (in this case, any year from 2010 to 2015).

As a second example, suppose a maintenance area makes a conformity determination in the year 2010, and the last year of its maintenance plan is 2017. The area's transportation plan covers the years 2010 through 2030. Under the current conformity rule, three regional emissions analyses will be required to meet the budget test requirements: An analysis must be done for 2030, the last year of the transportation plan/conformity determination; 2017, likely chosen because 40 CFR 93.118(b)(2) requires consistency with the budgets in the last year of the maintenance plan; and a year between 2017 and 2030 would also have to be selected for analysis, so that analysis years are not more than ten years apart.

Under today's proposal, this maintenance area would have to demonstrate consistency with the SIP budget for four years but could choose to perform a regional emissions analysis for only three of those years: 2030, because it is the last year of the transportation plan or conformity determination; any year from 2010 to 2015, to fulfill the proposed requirement to analyze a year no more than five years beyond the year the conformity determination is being made; and a year between 2020 and 2024, required so that analysis years are not more than ten years apart. In contrast to the first illustration above, the area is not required and could choose not to perform a regional emissions analysis for the year 2017 because the conformity rule permits the area to interpolate emissions for that year (40 CFR 93.118(d)(2)).

EPA is proposing a related change to 40 CFR 93.118(b). Currently, this provision requires that consistency with budgets be demonstrated for any year for which the SIP establishes a budget, the attainment year if it is in the timeframe of the transportation plan and conformity determination, the last year of the transportation plan/conformity determination, and intermediate years as needed so that years for which consistency is demonstrated are no more than ten years apart.

Today's proposal would simplify this language by requiring consistency for any years where a budget is established and for any years that are analyzed to meet the requirements in 40 CFR 93.118(d). This change would ensure that consistency is demonstrated for the analysis year chosen to fulfill a year within the first five years, in the case where the attainment year has passed or is not established.

This proposal would not affect requirements to demonstrate consistency with the budgets where the attainment year for a given NAAQS is within the timeframe of the transportation plan and conformity determination.

C. Rationale

EPA believes this proposal is consistent with the conformity requirements in the CAA that transportation activities not create new air quality violations, worsen existing violations, or delay timely attainment or achievement of interim reductions or milestones of the relevant NAAQS. The CAA does not require specific analysis years for the conformity tests; it simply establishes the foundations of these tests and that they apply over the entire timeframe of the transportation plan and conformity determination. EPA has established and subsequently amended the analysis years for these conformity tests in past rulemakings.

EPA believes it is appropriate to require that a near-term year be analyzed when using the budget test after an attainment year has passed or when an area’s attainment date has not been established because EPA believes doing so would better demonstrate that the CAA’s requirements at 176(c) are met, and thus would better protect air quality.

Today's proposal results from EPA's experience in implementing several different NAAQS over the years, including the 1997 ozone and PM2.5 NAAQS. While conformity applies one year after the effective date of nonattainment designations by statute, areas generally have three years to submit SIPs by statute. Once those SIP budgets are adequate or approved, areas have two years to determine conformity to those budgets (CAA 176(c)(2)(E) and 40 CFR 93.104(e)). In cases where the attainment date is within five or six years of the date of designations, this schedule can result in areas analyzing the attainment year and using the budgets specifically established for that year only once. In subsequent conformity determinations after the attainment year, there is no requirement to analyze a near term year.

As NAAQS are established or revised, EPA believes this case will be repeated because many CAA attainment dates are within a few years of the date that areas are designated nonattainment. The CAA establishes attainment dates for various criteria pollutants, the attainment dates vary by pollutant and, in most cases, attainment dates also vary based on the severity of an area’s air quality problem. For example, under Subpart 1 of the CAA, which covers nonattainment areas in general, areas must attain no later than five years from the effective date of their designation as nonattainment; for other various pollutants, attainment dates are often within five or six years.

21 For further details on EPA’s rulemakings that address analysis years requirements for transportation conformity tests, see the November 24, 1993 final rule (58 FR 62195). See also the July 9, 1996 proposed rule (61 FR 36118, 36130), the August 15, 1997 final rule (62 FR 43780), the July 1, 2004 final rule (69 FR 48004), and the January 24, 2008 final rule (73 FR 4429–4430).

22 Subpart 1 of the Clean Air Act provides for an extension of up to an additional five years based on the severity of an area’s air quality problem, and the availability and feasibility of controls.
of the date of nonattainment designations.

In contrast to areas with higher classifications where the attainment date is farther into the future, in areas with near-term attainment dates, the conformity rule’s requirement to analyze the attainment year is in effect only briefly. Once the attainment year passes, under the existing regulation, the only years that areas have to analyze are the last year of the transportation plan (or timeframe of the conformity determination), and intermediate years such that analysis years are not more than ten years apart. Therefore, the first year analyzed could be as distant as ten years into the future.

Today’s proposed change would rectify that situation by ensuring that a near-term year would be analyzed in all cases. EPA believes this result better protects air quality by ensuring that air quality impacts of the transportation plan and TIP are examined during the whole period of time covered by the transportation plan or conformity determination, not just the later years. EPA believes that ensuring analysis of a near-term year meets the intent of the CAA, which requires that a transportation plan, TIP, and project not from a conforming transportation plan and TIP not cause a new violation, worsen an existing violation or delay timely attainment or achievement of any interim milestone. Under today’s proposal, areas would be ensuring that state and local air quality goals are met over the entire timeframe of the transportation plan or conformity determination, even when the attainment date has passed.

Today’s proposal also ensures that areas designated for a secondary NAAQS analyze a near-term year when using the budget test. As described in Section VI, EPA has proposed a secondary ozone NAAQS that, if finalized as proposed, would be distinct from the primary ozone NAAQS that was proposed. It is also possible that in the future EPA will propose to establish distinct secondary NAAQS for other transportation-related pollutants.

The CAA does not establish specific attainment dates for secondary NAAQS. Instead, CAA section 172(a)(2)(B) requires that areas designated nonattainment for a secondary NAAQS attain this NAAQS as expeditiously as practicable. This means that an area’s attainment date may be established in its attainment demonstration. For conformity purposes, the attainment date would be established and therefore analyzed in the budget test, once EPA finds the budgets adequate or approves the SIP. However, an area designated for a secondary NAAQS could be using the budget test even before those budgets are found adequate or approved if it has adequate or approved budgets for another NAAQS of the same pollutant. In this case, today’s proposal would require that the area analyze a near-term year no more than five years in the future. Absent this requirement, the first analysis year for the secondary NAAQS in such an area could be as much as ten years in the future.

Although this proposed requirement may add some analytical burden to some areas, EPA does not believe that it would be significant. This proposal would continue to ensure that the budget test, when required, would continue to analyze emissions near the attainment year when it has passed or a near-term year in cases where the attainment date has not been established.

VIII. How does this proposal affect conformity SIPs?

Today’s proposal would not affect existing conformity SIPs that were prepared in accordance with CAA requirements, as amended by SAFETEA–LU23 because today’s proposal does not affect the three provisions that are required to be in a conformity SIP (40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c)). A conformity SIP contains the state’s criteria and procedures for interagency consultation (40 CFR 93.105) and two additional provisions related to written commitments for certain control and mitigation measures (40 CFR 93.122(a)(4)(ii) and 93.125(c)). In general, § 51.390 of the conformity rule specifies that after EPA approves any conformity SIP revisions, the conformity rule no longer governs conformity determinations (for the sections of the conformity rule that are covered by the approved conformity SIP).

In addition, 40 CFR 51.390(c) requires states to submit a new or revised conformity SIP to EPA within 12 months of the Federal Register publication date of any final conformity amendments if a state’s conformity SIP includes the provisions of such final amendments. However, EPA encourages states to revise their conformity SIP to include only the three required sections so that future changes to the conformity rule do not require further revisions to conformity SIPs. EPA will continue to work with states to approve such revisions as expeditiously as possible through flexible administrative techniques, such as parallel processing and direct final rulemaking.

Finally, any state that has not previously been required to submit a conformity SIP to EPA must submit a conformity SIP within 12 months of an area’s nonattainment designation (40 CFR 51.390(c)). For additional information on conformity SIPs, please refer to the January 2009 guidance entitled, “Guidance for Developing Transportation Conformity State Implementation Plans” available on EPA’s Web site at http://www.epa.gov/otaq/stateresources/transportconf/policy/420b09001.pdf.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993), this action is a “significant regulatory action” because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The information collection requirements of EPA’s existing transportation conformity regulations and the proposed revisions in today’s action are already covered by EPA information collection request (ICR) entitled, “Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects.” The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 93 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0561. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of rules subject to notice and comment rulemaking. However, today’s proposed revisions related to the SIP conformity rule were developed in cooperation with the Office of Management and Budget (OMB) in accordance with the regulatory program and policy for the Transportation Conformity SIP, so the RFA’s requirements were not considered applicable by OMB. In addition, Executive Order 12866, section 3(f), directs the OMB to aid in the early and substantive involvement of EPA and State and Tribal agencies in the development of regulatory actions in order to develop regulatory programs that are more effective, efficient, and reasonably flexible. As such, the OMB approved the proposed rule.

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today’s proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects Federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act. Therefore, this proposed rule will not impose any requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposal merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. Thus, today’s proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not significantly or uniquely impact small governments because it directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this proposed action merely proposes to establish and revise procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communication between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The Clean Air Act requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. Because today’s proposed amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to any reasonable alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency regarding energy. Further, this rule is not likely to have any adverse energy effects because it does not raise novel legal or policy issues adversely affecting the supply, distribution or use of energy arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Orders 12866 and 13211.

I. National Technology Transfer and Advancement Act

This proposed rule is not subject to the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposal does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or
environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

List of Subjects in 40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Air Act, Environmental protection, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: August 6, 2010.

Lisa P. Jackson,
Administrator.

For the reasons discussed in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 93 as follows:

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 93.101 is amended by removing paragraphs (1) through (6) of the definition for “National ambient air quality standards (NAAQS)” and by revising the definition for “Clean data” to read as follows:

§ 93.101 Definitions.

Clean data means air quality monitoring data determined by EPA to meet the applicable requirements of 40 CFR parts 50 and 58 and to indicate attainment of a national ambient air quality standard.

§ 93.105 [Amended]

3. Section 93.105(c)(1)(vi) is amended by removing the citation “§ 93.109(n)(2)(iii)” and adding in its place the citation “§ 93.109(g)(2)(iii)”.

4. Section 93.109 is amended as follows:

a. By revising paragraphs (b) introductory text, (c), and (d);

b. By removing paragraphs (e) through (k), and redesignating paragraphs (l), (m), and (n) as paragraphs (e), (f), and (g);

c. In newly redesignated paragraph (g)(2).

i. In paragraph (g)(2) introductory text, by removing the citation “paragraphs (c) through (m)” and adding in its place “paragraph (c)”;

ii. In paragraph (g)(2)(i)(ii), by removing the citation “paragraph (nl)(2)(ii)” and adding in its place “paragraph (g)(2)(ii)”; and

iii. In paragraph (g)(2)(i)(ii), by removing the term “paragraph (nl)(2)(ii)(C)” and adding in its place “paragraph (g)(2)(ii)(C)”.

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

(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. Paragraph (c) of this section explains when the budget and interim emissions tests are required for each pollutant and NAAQS. Paragraph (d) of this section explains when a hot-spot test is required. Paragraph (e) of this section addresses conformity requirements for areas with approved or adequate limited maintenance plans. Paragraph (f) of this section addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Paragraph (g) of this section addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

(c) Regional conformity test requirements for all nonattainment and maintenance areas. This provision applies one year after the effective date of EPA’s nonattainment designation for a NAAQS in accordance with § 93.102(d) and until the effective date of revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In all nonattainment and maintenance areas for a NAAQS, the budget test must be satisfied as required by § 93.118 for conformity determinations for such NAAQS made on or after:

   (i) The effective date of EPA’s finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for such NAAQS is adequate for transportation conformity purposes;

   (ii) The publication date of EPA’s approval of such a budget in the Federal Register; or

   (iii) The effective date of EPA’s approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

2. Prior to paragraph (c)(1) of this section applying for a NAAQS, in a nonattainment area that has approved or adequate motor vehicle emissions budgets in an applicable implementation plan or implementation plan submission for another NAAQS of the same pollutant, the following tests must be satisfied:

   (i) If the nonattainment area covers the same geographic area as another NAAQS of the same pollutant, the budget test as required by § 93.118 using the approved or adequate motor vehicle emissions budgets for that other NAAQS;

   (ii) If the nonattainment area covers a smaller geographic area within an area for another NAAQS of the same pollutant, the budget test as required by § 93.118 for either:

      (A) The nonattainment area, using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where such portion(s) can reasonably be identified through the interagency consultation process required by § 93.105; or

      (B) The area designated nonattainment for that other NAAQS, using the approved or adequate motor vehicle emissions budgets for that other NAAQS. If additional emissions reductions are necessary to meet the budget test for the nonattainment area for a NAAQS in such cases, these emissions reductions must come from within such nonattainment area;

   (iii) If the nonattainment area covers a larger geographic area and encompasses an entire area for another NAAQS of the same pollutant, then either (A) or (B) must be met:

      (A) The budget test as required by § 93.118 for the portion of the nonattainment area covered by the approved or adequate motor vehicle emissions budgets for that other NAAQS; and

      (2) the interim emissions tests as required by § 93.119 for one of the following areas: The portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets do not apply.
vehicle emissions budgets for that other NAAQS are established for each state of a multi-state nonattainment or maintenance area.

(B) The budget test as required by § 93.118 for the entire nonattainment area using the approved or adequate motor vehicle emissions budgets for that other NAAQS.

(iv) If the nonattainment area partially covers an area for another NAAQS of the same pollutant:

(A) The budget test as required by § 93.118 for the portion of the nonattainment area covered by the approved or adequate motor vehicle emissions budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multi-state nonattainment or maintenance area.

(3) In a nonattainment area, the interim emissions tests required by § 93.119 must be satisfied for a NAAQS if neither paragraph (c)(1) nor paragraph (c)(2) of this section applies for such NAAQS.

(4) An ozone nonattainment area must satisfy the interim emissions test for NOX, 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 other control strategy SIP that does not include a motor vehicle emissions budget for NOX. The implementation plan for an ozone NAAQS will be considered to establish a motor vehicle emissions budget for NOX if the implementation plan or plan submission contains an explicit NOX motor vehicle emissions budget that is intended to act as a ceiling on future NOX emissions, and the NOX motor vehicle emissions budget is a net reduction from NOX emissions levels in the SIP’s baseline year.

(5) Notwithstanding paragraphs (c)(1), (c)(2), and (c)(3) of this section, nonattainment areas with clean data for a NAAQS 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 for that NAAQS must satisfy one of the following requirements:

(i) The budget test and/or interim emissions tests as required by §§ 93.118 and 93.119 as described in paragraphs (c)(2) and (c)(3) of this section;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the NAAQS for which the area is designated nonattainment (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 in the most recent year of attainment as motor vehicle emissions budgets, if the state or local air quality agency requests that the motor vehicle emissions in the most recent year of attainment be used as budgets, and EPA approves the request in conjunction with the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment.

(6) For the PM10 NAAQS only, the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made if the submitted implementation plan revision for a PM10 nonattainment area is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(d) Hot-spot conformity test requirements for CO, PM2.5, and PM10 nonattainment and maintenance areas.

This provision applies in accordance with § 93.102(d) for a NAAQS and until the effective date of any revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, project-level conformity determinations in CO, PM10, and PM2.5 nonattainment and maintenance areas must include a demonstration that the hot-spot tests for the applicable NAAQS are satisfied as described in the following:

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

(3) FHWA/FTA projects in PM2.5 nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by § 93.116(a).

§ 93.116 [Amended]

5. Section 93.116(b) is amended by removing the citation “§ 93.109(f)(1)” and adding in its place the citation “§ 93.109(d)(1)”.

6. Section 93.118 is amended:

a. In paragraph (a), by removing the citation “§ 93.109(c) through (n)” and adding in its place the citation “§ 93.109(c) through (g)”;

b. By revising paragraph (b) introductory text;

c. In paragraph (d)(2), by adding a new sentence after the first sentence to read as follows:

§ 93.118 Criteria and procedures: Motor vehicle emissions budget.

§ 93.118Criteria and procedures: Motor vehicle emissions budget.

(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 a motor vehicle emissions budget(s), and for each year for which a regional emissions analysis is performed to fulfill the requirements in paragraph (d) of this section, as follows: * * * * * * * * * * (d) * * *

(2) * * * If the attainment year is no longer in the timeframe of the transportation plan and conformity determination, or if the attainment date has not yet been established, the first analysis year must be no more than five years beyond the year in which the conformity determination is being made. * * * * * * * * * *

7. Section 93.119 is amended as follows:

a. In paragraph (a), by removing the citation “§ 93.109(c) through (n)” and adding in its place the citation “§ 93.109(c) through (g)”;

b. In paragraph (b) introductory text, by removing “1-hour ozone and 8-hour”;

c. By revising paragraphs (b)(1)(i) and (b)(2)(i);

d. By revising paragraphs (c)(1)(i) and (c)(2)(i);

e. In paragraph (d),

i. By revising the heading of paragraph (d) to read “PM2.5, PM10, and NO2 areas”;

ii. In paragraph (d) introductory text, by removing “PM10 and NO2” and adding in its place “PM2.5, PM10, and NO2”;

iii. By revising paragraph (d)(2); and

iv. By revising paragraph (e).
§ 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.

(b) * * *
(1) * * *
(ii) The emissions predicted in the “Action” scenario are lower than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section by any nonzero amount.
(2) * * *
(ii) The emissions predicted in the “Action” scenario are not greater than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.
(c) * * *
(1) * * *
(ii) The emissions predicted in the “Action” scenario are lower than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

(b) * * *
(1) * * *
(ii) The emissions predicted in the “Action” scenario are lower than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

d. In paragraph (c) introductory text, by removing the citation “§ 93.109(l) or (m)” and adding in its place the citation “§ 93.109(e) or (f)”.

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DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 622
[Docket No. 0907271170–0314–02]

RIN 0648–AY10
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 17A

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 17A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would establish an annual catch limit (ACL) for red snapper of zero, which means all harvest and possession of red snapper in or from the South Atlantic EEZ would be prohibited, and for a vessel with a Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper, harvest and possession of red snapper would be prohibited in or from state or Federal waters. To constrain red snapper harvest to the ACL, this rule would implement an area closure for South Atlantic snapper-grouper that extends from southern Georgia to northern Florida where all harvest and possession of snapper-grouper would be prohibited (except when fishing with black sea bass pots or spearfishing gear for species other than red snapper), and require the use of non-stainless steel circle hooks north of 28° N. lat. Additionally, Amendment 17A would establish a rebuilding plan for red snapper, require a monitoring program as the accountability measure (AM) for red snapper, and specify a proxy for the fishing mortality rate that will produce the maximum sustainable yield (MSY) and specify optimum yield (OY). The intended effects of this rule are to end overfishing of South Atlantic red snapper and rebuild the stock.

DATES: Comments must be received no later than 5 p.m., eastern time, on September 27, 2010.

ADDRESSES: You may submit comments, identified by “0648–AY10”, by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal http://www.regulations.gov Fax: 727–824–5308, Attn: Kate Michie Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701

Instructions: No comments will be posted for public viewing until after the comment period is over. All comments received are a part of the public record and will generally be posted to http://www.regulations.gov without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: http://www.regulations.gov, enter “NOAA-NMFS–2010–0035” in the keyword search, then check the box labeled “Select to find documents accepting comments or submissions”, then select “Send a Comment or Submission.” NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 17A may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: 843–571–4366 or 866–SAFMC–10 (toll free); fax: 843–769–4520; e-mail: safmc@safmc.net. Amendment 17A includes an Environmental Assessment, an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727–824–5308; fax: 727–824–5308; e-mail: kate.michie@noaa.gov.

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper fishery is managed under the FMP. The FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management

93.121 [Amended]

8. Section 93.121 is amended:

a. In paragraph (b) introductory text, by removing the citation “§ 93.109(n)” and adding in its place the citation “§ 93.109(g)”. 