

# Interim Transportation Conformity Guidance for 2006 PM<sub>2.5</sub> NAAQS Nonattainment Areas

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Transportation and Regional Programs Division  
Office of Transportation and Air Quality  
U.S. Environmental Protection Agency

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## Section 1. Introduction

### *1.1. Purpose of this Guidance*

This document provides interim guidance for meeting transportation conformity requirements in areas designated nonattainment for the 2006 24-hour PM<sub>2.5</sub> national ambient air quality standards (“2006 PM<sub>2.5</sub> NAAQS”). EPA published a proposed “PM Amendments” rule earlier this year<sup>1</sup> to address the 2006 PM<sub>2.5</sub> NAAQS, but the final rule has not yet been published. Once the PM Amendments final rule is published, the transportation conformity regulations will address the 2006 PM<sub>2.5</sub> NAAQS.

In the interim, EPA is releasing this guidance to help new nonattainment areas meet conformity requirements in time. Transportation conformity for the 2006 PM<sub>2.5</sub> NAAQS applies one year after the effective date of nonattainment designations for this NAAQS. Clean Air Act section 176(c)(6) and 40 CFR 93.102(d) provide a one-year grace period from the effective date of designations before transportation conformity applies in areas newly designated nonattainment for a specific NAAQS.

EPA’s final rule designating areas for the 2006 PM<sub>2.5</sub> NAAQS is effective December 14, 2009. Given this effective date of designations, conformity for this NAAQS applies by December 14, 2010. EPA will work with 2006 PM<sub>2.5</sub> NAAQS nonattainment areas (“2006 PM<sub>2.5</sub> areas” in this guidance) to help them meet requirements, and we encourage consultation early.

This is interim guidance and will be replaced by the PM Amendments final rule. However, conformity determinations done according to this guidance should be consistent with the Clean Air Act and the existing transportation conformity rule, and the PM Amendments proposed rule as described in this guidance. Conformity determinations for the 2006 PM<sub>2.5</sub> NAAQS completed under this interim guidance before the PM Amendments final rule becomes effective will remain valid even after the effective date of the PM Amendments final rule (i.e., the final rule would not trigger another conformity determination for this NAAQS if one has already been completed). This guidance document is consistent with what is currently required and being implemented for PM<sub>2.5</sub> conformity determinations in areas designated for the 1997 PM<sub>2.5</sub> NAAQS.

The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), EPA’s federal partners in implementing the conformity rule, assisted in the development of this guidance and concurred on its content.

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<sup>1</sup> The proposed rule entitled, “Transportation Conformity Rule PM<sub>2.5</sub> and PM<sub>10</sub> Amendments,” (“PM Amendments”), was published on May 15, 2009.

## ***1.2. Background: Transportation Conformity***

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally funded or approved highway and transit activities 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 or contribute to new air quality violations, worsen existing violations, or delay timely attainment or any interim milestones of the relevant NAAQS. EPA’s transportation conformity rule (40 CFR Parts 51 and 93) establishes the criteria and procedures for determining whether metropolitan transportation plans, metropolitan transportation improvement programs (TIPs), and federally supported highway and transit projects conform to the SIP. Transportation conformity applies to designated nonattainment and maintenance areas<sup>2</sup> for transportation-related criteria pollutants: ozone, PM<sub>2.5</sub>, PM<sub>10</sub>, carbon monoxide, and nitrogen dioxide.

## ***1.3. 2006 PM<sub>2.5</sub> NAAQS and Designations***

EPA issued a final rule on October 17, 2006 that tightened the 24-hour PM<sub>2.5</sub> NAAQS from the 1997 level of 65 micrograms per cubic meter (µg/m<sup>3</sup>) to 35 µg/m<sup>3</sup> (71 FR 61144). In this final rule, EPA retained the 1997 annual PM<sub>2.5</sub> NAAQS of 15.0 µg/m<sup>3</sup>. This final rule was effective on December 18, 2006. EPA selected levels for the final NAAQS after completing an extensive review of thousands of scientific studies on the impact of fine and coarse particles on public health and welfare. For additional information about the October 17, 2006 rulemaking, the final rule and EPA outreach materials can be found at: <http://www.epa.gov/air/particlepollution/actions.html>, under the September 21, 2006 announcement.

EPA’s final rule designating areas for the 2006 PM<sub>2.5</sub> NAAQS, published in the *Federal Register* on November 13, 2009, is effective December 14, 2009.

In this *Federal Register* notice, EPA has also clarified that all 39 areas designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS were violating the annual PM<sub>2.5</sub> NAAQS, and two of those were also violating the 24-hour PM<sub>2.5</sub> NAAQS.<sup>3</sup> That is, EPA’s notice now clarifies that only two areas were designated nonattainment for the 1997 24-hour PM<sub>2.5</sub> NAAQS, and that all 39 nonattainment areas were designated nonattainment for the 1997 annual PM<sub>2.5</sub> NAAQS.

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<sup>2</sup> “Maintenance areas” are those areas that were initially designated nonattainment for a criteria pollutant and subsequently redesignated to attainment after 1990. Maintenance areas have SIPs developed under Clean Air Act section 175A.

<sup>3</sup> The two areas designated as nonattainment for both the annual and 24-hour 1997 PM<sub>2.5</sub> NAAQS are the Los Angeles-South Coast Air Basin, CA nonattainment area and the San Joaquin Valley, CA nonattainment area.

Transportation conformity applies for the NAAQS for which an area is designated nonattainment.<sup>4</sup> Therefore, in two of the 1997 PM<sub>2.5</sub> areas, conformity applies for both the 1997 annual and the 1997 24-hour NAAQS.<sup>5</sup> In the other 37 1997 PM<sub>2.5</sub> areas, conformity applies for the 1997 annual NAAQS, and not the 1997 24-hour PM<sub>2.5</sub> NAAQS.

For additional information about the nonattainment designations, refer to EPA's website at: <http://www.epa.gov/pmdesignations/2006standards/index.htm>.

#### ***1.4. Relationship Between Transportation Conformity Requirements for the 2006 PM<sub>2.5</sub> NAAQS and the 1997 PM<sub>2.5</sub> NAAQS***

Clean Air Act section 176(c)(5) requires conformity requirements to be met for the applicable PM<sub>2.5</sub> NAAQS in both 1997 and 2006 PM<sub>2.5</sub> nonattainment and maintenance areas. This is because nonattainment designations for the 1997 and 2006 PM<sub>2.5</sub> NAAQS are different designations with separate SIP requirements, different attainment dates, etc. The October 2006 rule establishing the 2006 PM<sub>2.5</sub> NAAQS did not revoke the 1997 annual or 24-hour PM<sub>2.5</sub> NAAQS. EPA's nonattainment designations for the 2006 PM<sub>2.5</sub> NAAQS do not affect existing 1997 PM<sub>2.5</sub> NAAQS nonattainment designations. While making conformity determinations for the 2006 PM<sub>2.5</sub> NAAQS will entail additional effort, it may be possible to rely on some of the work that has been done to address conformity for the 1997 PM<sub>2.5</sub> NAAQS, where areas are designated nonattainment for both the 1997 and 2006 PM<sub>2.5</sub> NAAQS. Refer specifically to Sections 3.4 and 4.4 of this guidance for additional information on this point.

Sections 3 and 4 of this guidance provide information regarding conformity requirements for regional emissions analyses and project-level analyses respectively for the 2006 PM<sub>2.5</sub> NAAQS.

#### ***1.5. Who can I contact for more information?***

For questions concerning a particular 2006 PM<sub>2.5</sub> nonattainment area, please contact the transportation conformity staff person responsible for this area at the appropriate EPA regional office. Contact information for EPA regional offices can be found on EPA's website at: <http://www.epa.gov/otaq/stateresources/transconf/contacts.htm>

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<sup>4</sup> Clean Air Act section 176(c)(5) and 40 CFR 93.102(b).

<sup>5</sup> These two 1997 PM<sub>2.5</sub> areas, the Los Angeles-South Coast Air Basin, CA nonattainment area and the San Joaquin Valley, CA nonattainment area have also been designated nonattainment for the 2006 PM<sub>2.5</sub> NAAQS. While both the 1997 24-hour and 2006 24-hour PM<sub>2.5</sub> NAAQS must be considered in these areas, in practice if the more stringent 2006 24-hour PM<sub>2.5</sub> NAAQS is met, then the 1997 24-hour PM<sub>2.5</sub> NAAQS is met as well.

General questions about this guidance can be directed to Laura Berry at EPA's Office of Transportation and Air Quality, [berry.laura@epa.gov](mailto:berry.laura@epa.gov), (734) 214-4858.

The May 15, 2009 PM Amendments proposed rule can be downloaded from EPA's website at: <http://www.epa.gov/otaq/stateresources/transconf/conf-regs.htm>

Additional information regarding the transportation conformity rule and associated guidance can be found on EPA's website at:

[www.epa.gov/otaq/stateresources/transconf/index.htm](http://www.epa.gov/otaq/stateresources/transconf/index.htm)

Additional information about the 2006 PM<sub>2.5</sub> NAAQS nonattainment designations can be found on EPA's website at:

<http://www.epa.gov/pmdesignations/2006standards/index.htm>

#### ***1.6. Does this guidance create any new requirements?***

No, this guidance is based on Clean Air Act requirements and existing associated regulations and does not create any new requirements. This guidance explains how to implement current transportation conformity requirements in areas that have been designated for the 2006 PM<sub>2.5</sub> NAAQS, prior to EPA's PM Amendments final rule that specifically addresses conformity for this NAAQS.

The Clean Air Act and EPA's regulations at 40 CFR Parts 51 and 93 contain legally binding requirements. This document is not a substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, DOT, states, or the regulated community, and may not apply to a particular situation based upon the circumstances. This guidance may be revised periodically without public notice.

This guidance will be superseded by EPA's final rule for the PM Amendments.

## Section 2. General Requirements

### *2.1. Timing of First Transportation Plan and TIP Conformity Determination*

Transportation conformity for the 2006 PM<sub>2.5</sub> NAAQS does not apply until one year after the effective date of nonattainment designations for this NAAQS.<sup>6</sup> EPA's final rule designating areas for the 2006 PM<sub>2.5</sub> NAAQS is effective December 14, 2009, so conformity for this NAAQS applies December 14, 2010.

The following discussion provides more details on the application of the one-year grace period in newly designated nonattainment areas for the 2006 PM<sub>2.5</sub> NAAQS in metropolitan, donut and isolated rural areas. This information is consistent with how conformity for new NAAQS has been implemented in the past.<sup>7</sup> Also see Section III.B. of the preamble of the PM Amendments proposed rule (74 FR 23026-23028).

A metropolitan planning organization (MPO)<sup>8</sup> and the U.S. Department of Transportation (DOT) must make a conformity determination with regard to the 2006 PM<sub>2.5</sub> NAAQS for the metropolitan transportation plan and TIP within one year after the effective date of the initial nonattainment designation for this NAAQS. The MPO and DOT can make such a conformity determination anytime during the one-year grace period, as long as it is completed by December 14, 2010. However, if the MPO and DOT miss the deadline, the nonattainment area would enter a conformity "lapse." See Section 2.8 below for more information on lapses.

Conformity determinations done by an MPO (or MPOs) must also include any donut areas<sup>9</sup> within the 2006 PM<sub>2.5</sub> NAAQS area (40 CFR 93.102(b)(2) and 93.122(a)(1)). MPOs must continue to meet conformity requirements for any other applicable NAAQS, including the 1997 PM<sub>2.5</sub> NAAQS, if the area is designated nonattainment or maintenance for such NAAQS as well. Determining conformity for these other NAAQS during the one-year grace period is not necessary unless required by 40 CFR 93.104 (for example, a new or amended transportation plan and TIP are to be adopted). The procedures for the interagency consultation process found in 40 CFR 93.105 or a state's

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<sup>6</sup> Clean Air Act section 176(c)(6) and 40 CFR 93.102(d) provide a one-year grace period from the effective date of designations before transportation conformity applies in areas newly designated nonattainment for a particular NAAQS.

<sup>7</sup> For example, the one-year grace period for newly designated areas was discussed in the July 1, 2004 final rule, 69 FR 40008 – 40009.

<sup>8</sup> Metropolitan areas are urbanized areas that have a population greater than 50,000 and a designated metropolitan planning organization (MPO) responsible for transportation planning per 23 U.S.C. 134. See 40 CFR 93.101 for the definition of metropolitan planning organization.

<sup>9</sup> A donut area is defined in 40 CFR 93.101 as a geographic area outside a metropolitan planning area boundary, but inside a designated nonattainment or maintenance area boundary that includes an MPO.



approved conformity SIP must be used in making conformity determinations for transportation plans and TIPs.

The interagency consultation group for each newly designated nonattainment area that includes a donut portion should determine how best to consider the donut area transportation system and new donut area projects in the MPO's regional emissions analyses and transportation plan and TIP conformity determinations. For more discussion on how conformity determinations should be made for donut areas, see the preamble to the July 1, 2004 conformity rule (69 FR 40013).

In isolated rural areas,<sup>10</sup> as in other newly designated nonattainment areas, the one-year conformity grace period for the 2006 PM<sub>2.5</sub> NAAQS will begin on the effective date of an isolated rural area's initial nonattainment designation. However, because these areas do not have federally required metropolitan transportation plans and TIPs, they are not subject to the frequency requirements for conformity determinations on transportation plans and TIPs (40 CFR 93.104(b), (c), and (e)). Instead, in an isolated rural area, a conformity determination is required for the 2006 PM<sub>2.5</sub> and other applicable NAAQS only when a non-exempt FHWA/FTA project(s) needs funding or approval. Conformity requirements for isolated rural areas can be found at 40 CFR 93.109(l).

See EPA's July 1, 2004 final rule for further background on how EPA has implemented this conformity grace period for 1997 PM<sub>2.5</sub> NAAQS areas (69 FR 40004).

## ***2.2. Overview of Requirements of a Conformity Determination for a Transportation Plan and TIP for the 2006 PM<sub>2.5</sub> NAAQS***

For all areas where conformity applies, including the 2006 PM<sub>2.5</sub> areas, Table 1 found in 40 CFR 93.109(b) lists the conformity criteria that apply for transportation plans, TIPs, and projects. See Section 4 of this guidance for information about conformity determinations for federally funded or approved projects.

A transportation plan or TIP conformity determination must include a regional emissions analysis that meets the requirements of 40 CFR 93.122. This regional emissions analysis must:

- use latest planning assumptions (40 CFR 93.110);
- use the latest emissions model (40 CFR 93.111);<sup>11</sup>

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<sup>10</sup> Isolated rural nonattainment and maintenance areas are defined in 40 CFR 93.101 as areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Refer to 40 CFR 93.101 for additional information.

<sup>11</sup> The latest emissions model is currently MOBILE6.2 for all states except California, and EMFAC2007 for California. While EPA will soon be issuing the final MOVES model to replace MOBILE6.2 (a draft version of MOVES has already been released and can be downloaded from EPA's website at <http://www.epa.gov/otaq/models/moves/index.htm>), EPA will establish a grace period before MOVES is required, according to 40 CFR 93.111(b). Therefore, implementers will be able to use MOBILE6.2 for the first 2006 PM<sub>2.5</sub> NAAQS conformity determination if the regional emissions analysis is started before the

- pass the appropriate conformity test – the budget test and/or one of the interim emissions tests – as described in Section 3 of this guidance.

In addition, other requirements must be met and documented in the transportation plan and TIP conformity determination:

- Interagency consultation and public participation (40 CFR 93.112) – see Section 2.3 of this guidance;
- Timely implementation of transportation control measures (TCMs) in approved SIPs (40 CFR 93.113) – see Section 2.4 of this guidance.

Please refer to the sections of the transportation conformity regulation noted above for additional information that is not covered in this interim guidance.

### ***2.3. Consultation for Transportation Plan/TIP Conformity Determinations***

Interagency Consultation. Conformity must be determined in consultation with the appropriate local, state, and federal agencies based on the requirements of 40 CFR 93.112. If your state has an approved conformity SIP, consultation must meet the requirements found in that SIP.<sup>12</sup> If your state does not have such an approved conformity SIP, consultation must meet the requirements found in 40 CFR 93.105(a)(2).

When making a conformity determination, 2006 PM<sub>2.5</sub> areas must use the interagency consultation process to make decisions regarding specific aspects of the conformity determination. For example, consultation must be used to:

- Determine the model, methods, and assumptions to be used in regional emissions analyses and hot-spot analyses<sup>13</sup> (40 CFR 93.105(c)(1)(i)) – see footnote 11 regarding the emissions model to be used;
- Determine whether there are any transportation projects in the area that don't fit the definition of “regionally significant project” found in 40 CFR 93.101 but should be included in the area's regional emissions analysis (40 CFR 93.105(c)(1)(ii));

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end of the grace period for MOVES. See EPA's website at: <http://www.epa.gov/otaq/stateresources/transconf/policy.htm> for upcoming MOVES SIP and conformity policy guidance that will describe how MOVES will be applied in these areas.

<sup>12</sup> A conformity SIP governs the conformity process in a state for the portions of the federal transportation conformity regulations that it includes. A conformity SIP is required to contain only the state's criteria and procedures for interagency consultation (40 CFR 93.105) and two additional conformity provisions (40 CFR 93.122(a)(4)(ii) and 93.125(c)). Unlike a reasonable further progress SIP, an attainment demonstration, or maintenance plan, a conformity SIP does not contain motor vehicle emissions budgets, emissions inventories, air quality demonstrations, or control measures. For more information, see EPA's “Guidance for Developing Transportation Conformity State Implementation Plans (SIPs),” found on EPA's website at: <http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf>.

<sup>13</sup> This includes making specific decisions such as the time of year that should be modeled, as appropriate, which years should be analyzed, and models and inputs to be used.

- Evaluate whether the area has any projects that are exempt according to 40 CFR 93.126 and 93.127 that should be treated as non-exempt (40 CFR 93.105(c)(1)(iii));
- Determine whether there are any TCMs in an approved SIP for the area and evaluate whether those TCMs are behind schedule. For any TCM behind schedule, determine whether past obstacles to its implementation have been identified and are being overcome, and whether the TCM is getting maximum priority for approval and funding (40 CFR 93.105(c)(1)(iv)). See Section 2.4 of this guidance for more information on this requirement.

Note that this is a partial list of items to be discussed through the interagency consultation process; see the state's conformity SIP or the transportation conformity rule at 40 CFR 93.105(c) for the complete list.

Those 2006 PM<sub>2.5</sub> areas where conformity already applies for another NAAQS will be able to use their existing interagency consultation process for making these decisions. These areas should consider whether any additional agencies need to be part of the process if the boundary of the 2006 PM<sub>2.5</sub> area is different from the area where conformity already applies.

Public Consultation. Agencies making conformity determinations must also give the public an opportunity for comment, in accordance with the rule's requirements at 40 CFR 93.105(e) or any state's approved conformity SIP. Note that the public must have access to all technical and policy information considered by the agency making the conformity determination at the beginning of the comment period, and prior to taking formal action on the conformity determination. The requirements of a proactive public involvement process are outlined in DOT's transportation planning regulations at 23 CFR 450.316(a).

## ***2.4. Timely Implementation of TCMs***

The conformity determination must include a demonstration of timely implementation of TCMs in approved SIPs as required by 40 CFR 93.113(b) for transportation plans and 40 CFR 93.113(c) for TIPs. The conformity rule defines transportation control measures at 40 CFR 93.101. The requirements for timely implementation of TCMs apply only to TCMs in an approved SIP. Most likely, 2006 PM<sub>2.5</sub> areas will not have an approved SIP for this NAAQS during the time that this guidance is in effect.

However, these areas could have approved SIPs for the 1997 PM<sub>2.5</sub> NAAQS or another NAAQS. Conformity determinations for the 2006 PM<sub>2.5</sub> NAAQS must ensure timely implementation of any TCMs included in any approved SIPs for the area.<sup>14</sup> EPA addressed this point in the July 1, 2004 final rule:

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<sup>14</sup> If a TCM in an approved SIP has already been substituted with one or more other TCMs, the timely implementation requirement applies to the substitute TCM(s). For additional information about substituting TCMs, please refer to EPA's "Guidance for Implementing the Clean Air Act Section 176(c)(8)

Clean Air Act section 176(c) requires that TCMs in approved SIPs be implemented in a timely manner according to the schedules in the SIP. This requirement is not contingent on what type of SIP, pollutant, or standard for which the approved TCM was established. (69 FR 40013).

## ***2.5. Pollutants and Precursors Examined in the First Regional Emissions Analyses for the 2006 PM<sub>2.5</sub> NAAQS***

The transportation conformity rule at 40 CFR 93.102(b) describes the pollutants that must be examined in a regional emissions analysis done for PM<sub>2.5</sub>:

Directly emitted PM<sub>2.5</sub>. In 2006 PM<sub>2.5</sub> areas, regional conformity analyses must be completed for directly emitted PM<sub>2.5</sub> (40 CFR 93.102(b)(1)). Directly emitted PM<sub>2.5</sub> includes exhaust, brake and tire wear emissions,<sup>15</sup> and re-entrained road dust may also have to be included as directly emitted PM<sub>2.5</sub> as discussed below.

Oxides of nitrogen (NOx). Regional conformity analyses must be completed for NOx in 2006 PM<sub>2.5</sub> areas, unless both the EPA Regional Administrator and the director of the state air agency make a finding that transportation-related emissions of NOx within the nonattainment area are not a significant contributor to the PM<sub>2.5</sub> nonattainment problem and notify the MPO and DOT (40 CFR 93.102(b)(2)(iv)).

Other potential precursors. Regional conformity analyses are not required for volatile organic compounds (VOC), sulfur dioxide (SO<sub>2</sub>) or ammonia (NH<sub>3</sub>) in 2006 PM<sub>2.5</sub> areas unless either the EPA Regional Administrator or the director of the state air agency makes a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and notifies the MPO and DOT (40 CFR 93.102(b)(2)(v)).

Areas should use the interagency consultation process if there are questions about whether conformity applies for a PM<sub>2.5</sub> precursor.

### Re-entrained road dust.

Re-entrained road dust emissions are produced by travel on paved and unpaved roads, including emissions from anti-skid and de-icing materials. Re-entrained road dust isn't included in the regional emissions analysis for direct PM<sub>2.5</sub> unless either the EPA Regional Administrator or the director of the state air agency makes a finding that re-entrained road dust emissions within the area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and notifies the MPO and DOT (40 CFR 93.102(b)(3)).

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Transportation Control Measure Substitution and Addition Provision,” found on EPA’s website at: <http://www.epa.gov/otaq/stateresources/transconf/policy/420b09002.pdf>.

<sup>15</sup> The latest approved emissions model is used to estimate directly emitted PM<sub>2.5</sub> from vehicle exhaust and brake and tire wear – MOBILE6.2 in all states other than California, and EMFAC2007 in California.

The interagency consultation process must be used to discuss what modeling methods and data are appropriate for a conformity analysis, per 40 CFR 93.105(c)(1). Areas are required to use AP-42<sup>16</sup> to estimate road dust unless they have an EPA-approved local method.

Construction dust.

Most areas will not need to be concerned about including construction-related fugitive dust in a regional emissions analysis during the time that this interim guidance applies. Construction-related fugitive dust needs to be included in a 2006 PM<sub>2.5</sub> regional emissions analysis only if the SIP identifies it as a significant contributor to the PM<sub>2.5</sub> nonattainment problem, based on 40 CFR 93.122(f). In such a case, the regional PM<sub>2.5</sub> emissions analysis has to consider construction-related fugitive PM<sub>2.5</sub> and account for the level of construction activity, the fugitive PM<sub>2.5</sub> control measures in the SIP, and the dust-producing capacity of the proposed activities (40 CFR 93.122(f)(2)).

The interagency consultation process must be used to discuss what methods and data are appropriate for estimating construction dust emissions (40 CFR 93.105(c)(1)(i)). Either AP-42 or locally-developed methods could be used, as determined through consultation.

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<sup>16</sup> See the Notice of Availability published May 19, 2004, (69 FR 28830-28832) found on EPA's website at: <http://www.epa.gov/fedrgstr/EPA-AIR/2004/May/Day-19/a11340.htm> and more recently, EPA's memorandum, "Policy Guidance on the Use of the November 1, 2006, Update to AP-42 for Re-entrained Road Dust for SIP Development and Transportation Conformity," August 2, 2007, found on EPA's website at: <http://www.epa.gov/otaq/stateresources/transconf/policy/420b07055.pdf>.

The following table summarizes the information in Section 2.5:

**Pollutants Examined for PM<sub>2.5</sub> Regional Emissions Analysis:<sup>17</sup>**

<b>Pollutant/Precursor</b>	<b>Included in 2006 PM<sub>2.5</sub> Regional Emissions Analysis?</b>
Direct PM <sub>2.5</sub> – exhaust, brake and tire wear	Yes
NO <sub>x</sub>	Yes, unless both EPA and the state find that it is not a significant contributor
VOCs, SO <sub>2</sub> , or NH <sub>3</sub>	No, unless either EPA or the state finds any of these precursors are a significant contributor (or SIP includes a budget for any of these precursor)
Re-entrained road dust	No, unless either EPA or the state finds it a significant contributor (or included in SIP budget)
Construction dust	No, unless SIP identifies it as a significant contributor

**2.6. What happens if an area misses the one-year conformity deadline?**

If, at the conclusion of the one-year grace period for newly designated areas, the MPO and DOT have not made a transportation plan and TIP conformity determination for the relevant pollutant and NAAQS, the area would be in a conformity “lapse.” During a conformity lapse, only certain projects can receive additional federal funding or approvals to proceed (e.g. exempt projects, project phases that were approved before the lapse). The practical impact of a conformity lapse will vary on an area-by-area basis. The lapse grace period found in 40 CFR 93.104(b)(3) and (c)(3) does not apply at the end of the one-year conformity grace period for newly designated areas.

Although the one-year conformity grace period is available to isolated rural areas, most likely no conformity consequences would occur. As discussed in Section 2.1 of this guidance, a conformity determination is required in isolated rural areas only when a non-exempt FHWA/FTA project needs funding or approval.

Section III.B. of the preamble of the PM Amendments proposed rule (74 FR 23026-23028) also covers this information.

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<sup>17</sup> Information in the table is based on 40 CFR 93.102(b)(2) and (3).

## Section 3. Regional Conformity Tests

The conformity rule provides several tests for determining whether transportation plans and TIPs conform, and 40 CFR 93.109 indicates which test or tests are required in specific circumstances. The budget test, described at 40 CFR 93.118, is used when an area has either adequate or approved motor vehicle emissions budgets in a SIP. The interim emissions tests are found at 40 CFR 93.119. When a 2006 PM<sub>2.5</sub> area does not have adequate or approved PM<sub>2.5</sub> budgets for any PM<sub>2.5</sub> NAAQS, one of the two interim emissions tests must be done, as described below.

### 3.1. *Conformity Tests for the First Conformity Determination*

For the first conformity determination for the 2006 PM<sub>2.5</sub> NAAQS, SIP budgets for this NAAQS will not yet be submitted. Therefore, these areas will have to use a different test for conformity:

- If a 2006 PM<sub>2.5</sub> area has adequate or approved SIP budgets from a SIP that addresses the 1997 PM<sub>2.5</sub> NAAQS, it must use the budget test for 2006 PM<sub>2.5</sub> conformity<sup>18</sup> (skip to Section 3.7);
- If a 2006 PM<sub>2.5</sub> area does not have adequate or approved budgets for the 1997 PM<sub>2.5</sub> NAAQS, it must use one of the interim emissions tests, either:
  - the build-no-greater-than-no-build test (“build/no-build test”) found at 40 CFR 93.119(e)(1), or
  - the no-greater-than-baseline year emissions test (“baseline year test”), described at 40 CFR 93.119(e)(2).

The information discussed here is consistent with the PM Amendments proposed rule; see preamble Sections V and VI, and proposed regulatory text in §93.109(j) and (k) as background.

The interagency consultation process must be used to determine which test for conformity applies, and other details as described in Section 2.3 of this guidance. Additional decisions will need to be made through interagency consultation if the area covers multiple jurisdictions, for example, if the area includes portions of more than one state, or is covered by more than one MPO.

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<sup>18</sup> At this time it is known that all but three areas that are designated for both the 2006 and 1997 PM<sub>2.5</sub> NAAQS have 2006 PM<sub>2.5</sub> nonattainment boundaries that cover exactly the same geographic area as the 1997 PM<sub>2.5</sub> boundaries. In two areas the 2006 PM<sub>2.5</sub> boundary is smaller than the 1997 PM<sub>2.5</sub> boundary, and one 2006 PM<sub>2.5</sub> area is comprised of two 1997 PM<sub>2.5</sub> areas. Therefore, in nearly all cases if 1997 PM<sub>2.5</sub> budgets are available, meeting the budget test will be sufficient because it will cover the entire 2006 PM<sub>2.5</sub> area. EPA will work with all areas to ensure they know which type of test applies for conformity.

Where an area is also subject to conformity for the 1997 PM<sub>2.5</sub> NAAQS, some of the work done for the 1997 PM<sub>2.5</sub> NAAQS conformity determination may be useful for the 2006 PM<sub>2.5</sub> conformity determination. Refer to Section 3.4 of this guidance.

EPA will work DOT and state and local transportation and air quality agencies to determine which conformity test applies in each 2006 PM<sub>2.5</sub> area for the first determination.

### **3.2. *Interim Emissions Tests***

As mentioned in Section 3.1. above, areas that do not have adequate or approved PM<sub>2.5</sub> budgets for any PM<sub>2.5</sub> NAAQS must use one of the interim emissions tests according to the regulations at 40 CFR 93.119(e). As described in Section V of the PM Amendments proposed rule preamble, the 2006 PM<sub>2.5</sub> areas that must use one of the interim emissions tests are either:

- “Brand new” PM<sub>2.5</sub> nonattainment areas, i.e., those that were designated attainment for the 1997 PM<sub>2.5</sub> NAAQS, or
- Areas that were designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS that do not yet have adequate or approved budgets for the 1997 PM<sub>2.5</sub> NAAQS.

These 2006 PM<sub>2.5</sub> nonattainment areas have a choice between the following interim emissions tests in 40 CFR 93.119 for conformity determinations conducted before adequate or approved 2006 PM<sub>2.5</sub> SIP budgets are established:

- The build-no-greater-than-no-build test (“build/no-build test”) found at 40 CFR 93.119(e)(1). In this test, conformity would be demonstrated if in each analysis year, the transportation emissions reflecting the proposed transportation plan or TIP (the “build” case) were less than or equal to emissions from the transportation system that would result from current programs (the “baseline scenario” or “no-build” case defined in 40 CFR 93.119(h)); OR
- The no-greater-than-baseline year emissions test (“baseline year test”), described at 40 CFR 93.119(e)(2). In this test, conformity would be demonstrated if in each analysis year, the transportation emissions reflecting the proposed transportation plan or TIP (the “build” case) were less than or equal to the level of motor vehicle emissions in the baseline year. Refer to Section 3.6 of this guidance for a discussion of baseline years.

These requirements are also discussed in Section V of the preamble of the PM Amendments proposed rule.

Regardless of whether the area chooses the baseline year test or build/no-build test, the required analysis years, based on 40 CFR 93.119(g), are:



- A year within five years of the date the analysis is being done;
- The last year of the transportation plan / conformity determination; and
- Intermediate years as necessary so that analysis years are not more than 10 years apart.

Please refer to the transportation conformity rule for further explanation of these tests.

Note that those 2006 PM<sub>2.5</sub> areas that contain more than one MPO and/or a donut portion would follow EPA's existing 2004 guidance entitled, "Companion Guidance for the July 1, 2004 Final Transportation Conformity Rule, Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards," (EPA420-B-04-012), (the "multi-jurisdictional guidance"). See Section 3.5 of this guidance for more information about the multi-jurisdictional guidance.

### ***3.3. How should areas determining conformity for PM<sub>2.5</sub> for the first time develop a regional emissions analysis for an interim emissions test?***

Because the 2006 PM<sub>2.5</sub> NAAQS designations were only for the 2006 24-hour PM<sub>2.5</sub> NAAQS, the regional emissions analysis will be based on emissions for a 24-hour time period.

For either the baseline year test or the build/no-build test, for each analysis year, emissions must be estimated for the build scenario according to 40 CFR 93.119(i) with a 24-hour emissions inventory. (The build scenario is referred to as the "Action" scenario at 40 CFR 93.119(i).)

This 24-hour emissions inventory estimates direct PM<sub>2.5</sub> and NO<sub>x</sub> emissions that result from the build scenario using MOBILE6.2 in a 24-hour period. For each analysis year chosen, areas should choose MOBILE6.2 inputs for the season of the year where violations of the 2006 PM<sub>2.5</sub> NAAQS occurred.<sup>19</sup> If violations occurred in more than one season, implementers should use the interagency consultation process to choose the season (or seasons) that would best ensure that the Clean Air Act is met, for example by choosing the season with the most frequent or most severe violations, or the season with the highest VMT, or both.<sup>20</sup> The choice of season or seasons should be based on air quality data from the three years used to make designations (i.e., 2006 – 2008). Interagency consultation should be used to decide if more recent air quality data indicates that a different season should be analyzed.

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<sup>19</sup> In California where EMFAC is used, areas should use the interagency consultation process to determine appropriate methods.

<sup>20</sup> Note that this guidance regarding the choice of season applies only when using MOBILE6.2 and not MOVES because MOBILE6.2 PM<sub>2.5</sub> emission factors are not sensitive to changes in temperature. EPA will provide guidance on this issue when MOVES is released. See EPA's website at: <http://www.epa.gov/otaq/models/moves/index.htm> and <http://www.epa.gov/otaq/stateresources/transconf/policy.htm> for future MOVES guidance.

For each analysis year, these emission factors from MOBILE6.2 for direct PM<sub>2.5</sub> and NO<sub>x</sub> for the season chosen should be multiplied by the seasonally-adjusted average daily VMT in that analysis year to create an estimate of transportation emissions in a 24-hour period. For additional guidance on creating daily emissions inventories, refer to EPA's existing guidance documents.<sup>21</sup>

Note that whatever season is chosen to estimate the build scenario emissions, the same season should be used for comparison whether using the baseline year test or build/no-build test. For example, emissions for a build scenario calculated using winter MOBILE6.2 inputs should be compared to emissions in the winter of the baseline year (see Section 3.6. for a discussion of the baseline year in 2006 PM<sub>2.5</sub> areas), or emissions in winter from the no-build scenario.

Refer to 40 CFR 93.119 for addition information about conducting the build/no-build and baseline year tests.

#### ***3.4. Can an area using an interim emissions test for 1997 PM<sub>2.5</sub> conformity apply the regional emissions analysis to 2006 PM<sub>2.5</sub> conformity as well?***

When areas are determining conformity for the 1997 and 2006 PM<sub>2.5</sub> NAAQS at the same time, they could apply some of the information developed in the 1997 PM<sub>2.5</sub> regional emissions analysis in creating a 2006 PM<sub>2.5</sub> regional emissions analysis.

First, note that regardless of whether the area is using the baseline year test or build/no-build test, the same analysis years can be used for 1997 PM<sub>2.5</sub> conformity and 2006 PM<sub>2.5</sub> conformity when the analyses are done at the same time, if they meet applicable requirements for both NAAQS (refer to Section 3.2 of this guidance and 40 CFR 93.119(g) for analysis year requirements).

In most 1997 PM<sub>2.5</sub> areas, conformity applies only for the annual NAAQS.<sup>22</sup> While the results of an interim emissions test for the 1997 annual PM<sub>2.5</sub> NAAQS cannot be directly applied for the 2006 24-hour PM<sub>2.5</sub> NAAQS, the option described below could save implementers some effort when conformity is being determined for both of these

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<sup>21</sup> Specifically, see EPA's "Technical Guidance on the Use of MOBILE6.2 for Emission Inventory Preparation," EPA420-R-04-013, August 2004, found on EPA's website at: <http://www.epa.gov/otaq/models/mobile6/420r04013.pdf> and "Procedures for Emission Inventory Preparation - Vol IV: Mobile Sources," found at: <http://ntl.bts.gov/DOCS/AQP.html>

<sup>22</sup> See Section 1.3 of this guidance. In two of the 1997 PM<sub>2.5</sub> areas, conformity applies for both the 1997 annual PM<sub>2.5</sub> NAAQS and the 1997 24-hour PM<sub>2.5</sub> NAAQS. However, note that Section 3.4 of this guidance would not apply to these two areas if they have adequate 1997 PM<sub>2.5</sub> SIP budgets.

NAAQS at the same time. This option applies only when using MOBILE6.2 for regional emissions analyses.<sup>23</sup>

Areas should develop the annual emissions for the 1997 PM<sub>2.5</sub> NAAQS by estimating emissions in two seasons, summer and winter; four seasons; or in the 12 months of the year.<sup>24</sup>

To apply information from the analysis done for the 1997 PM<sub>2.5</sub> NAAQS to the 2006 PM<sub>2.5</sub> analysis, for each analysis year, areas should use the emission factors developed in the 1997 PM<sub>2.5</sub> NAAQS regional emissions analysis for PM<sub>2.5</sub> and NO<sub>x</sub> in a season or month where violations of the 2006 PM<sub>2.5</sub> NAAQS occurred, and multiply these emission factors by the seasonally-adjusted average daily VMT for the area of the analysis year.<sup>25</sup> If violations occurred in more than one season or month, the interagency consultation process should be used to choose the season or month that would best ensure that the Clean Air Act is met, for example by choosing the season with the most frequent or most severe violations, or the season with the highest VMT, or both.<sup>26</sup> The choice of season or seasons should be based on air quality data from the three years used to make designations (i.e., 2006 – 2008), unless more recent air quality data indicates that a different season should be analyzed, as decided through consultation.

Whatever season is chosen to estimate the build scenario emissions, the same season should be used for comparison whether using the baseline year test or build/no-build test. For example, emissions for a build scenario calculated using winter MOBILE6.2 inputs should be compared to emissions in the winter of the baseline year (see Section 3.6. for a discussion of the baseline year in 2006 PM<sub>2.5</sub> areas), or emissions in winter from the no-build scenario.

Note that prior to the effective date of the PM Amendments final rule, the baseline year for the 1997 and 2006 PM<sub>2.5</sub> NAAQS will be the same year – 2002. After the effective

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<sup>23</sup> Areas in California should use the interagency consultation process to determine appropriate methods. In all other 2006 PM<sub>2.5</sub> areas, EPA expects that MOBILE6.2 will be used for the first 2006 PM<sub>2.5</sub> conformity determinations. Refer to footnote 11 for more information about the use of MOBILE6.2.

<sup>24</sup> This interim guidance for 2006 PM<sub>2.5</sub> areas does not change how analyses are to be done for the 1997 PM<sub>2.5</sub> NAAQS, which is covered in “Guidance for Creating Annual On-Road Mobile Source Emission Inventories for PM<sub>2.5</sub> Nonattainment Areas for Use in SIPs and Conformity,” EPA420-B-05-008, August 2005, found on EPA’s website at: <http://www.epa.gov/otaq/stateresources/transconf/policy/420b05008.pdf>. In particular, Question 7 on pp. 5-8 of that guidance addresses how analyses are to be done for the 1997 PM<sub>2.5</sub> NAAQS.

<sup>25</sup> If a 24-hour emissions estimate is available in the appropriate season or month because this step has been completed for 1997 PM<sub>2.5</sub> NAAQS conformity and conformity is being determined for the 1997 PM<sub>2.5</sub> NAAQS and the 2006 PM<sub>2.5</sub> NAAQS at the same time, it does not need to be redone but can be applied in the regional emissions analysis for 2006 PM<sub>2.5</sub> conformity.

<sup>26</sup> Note that this guidance regarding the choice of season applies only when using MOBILE6.2 and not MOVES because MOBILE6.2 PM<sub>2.5</sub> emission factors are not sensitive to changes in temperature. EPA’s MOVES guidance documents will differ from this interim guidance in this respect.

date of the final rule, EPA has proposed in the PM Amendments proposed rule that the baseline year for the 2006 PM<sub>2.5</sub> NAAQS would be a different year. See Section 3.6 of this guidance for additional discussion of the baseline year.

### ***3.5. Additional Guidance for 2006 PM<sub>2.5</sub> Areas Using the Interim Emissions Tests***

Any areas that use one of the interim emissions tests may also want to refer to Part 2 of EPA's multi-jurisdictional guidance.<sup>27</sup> Part 2 of the multi-jurisdictional guidance covers conformity determinations and regional emissions analyses before SIP budgets are adequate or approved, and specifically addresses the following topics:

- The geographic area to be examined in a regional emissions analysis and conformity determination before the area has adequate or approved budgets (Question 3, p. 8 of multi-jurisdictional guidance);
- How multi-jurisdictional areas can create a regional emissions analysis for the entire nonattainment area (Question 4, p. 9 of multi-jurisdictional guidance);
- The decisions to be made in the interagency consultation process (Question 5, p. 11 of the multi-jurisdictional guidance);
- What occurs when one MPO can meet the requirements in 40 CFR 93.119 and the other cannot (Question 6, p. 12 of the multi-jurisdictional guidance); and
- Who has responsibility for estimating emissions in a donut area (Question 7, p. 13 of the multi-jurisdictional guidance).

### ***3.6. Baseline Year for the Baseline Year Test***

The required baseline year for the 2006 PM<sub>2.5</sub> NAAQS may change once the PM Amendments final rule is published and effective. Prior to the effective date of the final rule, the baseline year for these areas is 2002 (found in 40 CFR 93.119(e)). However, EPA has proposed to update the baseline year for 2006 PM<sub>2.5</sub> areas, which if finalized, would result in baseline years of either 2005 or 2008.

Any conformity determination finished<sup>28</sup> before the PM Amendments final rule becomes effective must use 2002 as the baseline year. Such a determination will remain valid even after the effective date of the PM Amendments final rule, which may specify a different baseline year for 2006 PM<sub>2.5</sub> areas. Any conformity determination finished after the effective date of the PM Amendments final rule must use the baseline year identified in the final rule. (EPA proposed that only one of the options would be finalized, therefore

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<sup>27</sup> "Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards," EPA420-B-04-012, July 2004, found on EPA's website at <http://www.epa.gov/otaq/stateresources/transconf/policy/420b04012.pdf>.

<sup>28</sup> A conformity determination is finished on the date that DOT makes its conformity determination.

only one of the two years identified above – either 2005 or 2008 – would be the resulting baseline year).

EPA recommends that MPOs use the interagency consultation process to discuss the likely timing of DOT's conformity determination, and which baseline year will most likely be in effect at that time. EPA Regional Offices are available for consultation on a case-by-case basis; refer to Section 1.5 for contact information.

MPOs using the baseline year test could also compare emissions from the future planned transportation network to emissions in 2002, 2005, and 2008, since those are the baseline years that would result from the options EPA set forth in the PM Amendments proposed rule. However, EPA believes that the consultation process can help MPOs avoid this additional work.

Note that the baseline year emissions need to be modeled rather than interpolated, based on the latest emissions model and appropriate methods for estimating travel and speeds as required by 40 CFR 93.110, 93.111, and 93.122.

### ***3.7. Using 1997 PM<sub>2.5</sub> NAAQS Budgets for 2006 PM<sub>2.5</sub> Conformity***

As discussed in preamble Section IV of the PM Amendments proposed rule, where a 2006 PM<sub>2.5</sub> area is covered by adequate or approved 1997 PM<sub>2.5</sub> budgets, EPA believes that the 1997 PM<sub>2.5</sub> budgets must be used for 2006 PM<sub>2.5</sub> conformity. Most of the areas designated for both the 2006 and 1997 PM<sub>2.5</sub> NAAQS have 2006 PM<sub>2.5</sub> nonattainment boundaries that cover exactly the same geographic area as the 1997 PM<sub>2.5</sub> boundaries. Therefore, in most cases if 1997 PM<sub>2.5</sub> budgets are available, meeting the budget test will be sufficient because it will cover the entire 2006 PM<sub>2.5</sub> area.<sup>29</sup> Consistent with the Clean Air Act as interpreted by a court decision described below, these areas must meet the budget test for the 2006 PM<sub>2.5</sub> NAAQS using existing adequate or approved SIP budgets for the 1997 PM<sub>2.5</sub> NAAQS.

For areas that use 1997 annual PM<sub>2.5</sub> budgets to meet 2006 PM<sub>2.5</sub> requirements, a regional emissions analysis for the 2006 PM<sub>2.5</sub> NAAQS would necessarily be done based on an analysis of annual emissions (tons per year), rather than 24-hour emissions (tons per day).

This requirement to use adequate or approved 1997 PM<sub>2.5</sub> budgets is based on EPA's existing rule for areas designated for the 1997 8-hour ozone NAAQS that had SIP budgets for the 1-hour ozone NAAQS and a 2006 court decision. EPA has proposed in the PM Amendments proposed rule to add a regulatory provision to clarify this requirement. Thus, EPA believes that using the existing 1997 PM<sub>2.5</sub> budgets as a proxy

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<sup>29</sup> At this time, it is known that in two areas the 2006 PM<sub>2.5</sub> boundary is smaller than the 1997 PM<sub>2.5</sub> boundary, and that one 2006 PM<sub>2.5</sub> area comprised of two 1997 PM<sub>2.5</sub> areas. EPA will work with all areas to ensure they know which type of test applies for conformity, particularly with the areas where the 2006 PM<sub>2.5</sub> area boundary is not identical to the 1997 PM<sub>2.5</sub> area boundary.

for the 2006 PM<sub>2.5</sub> NAAQS is required by the Clean Air Act. In *Environmental Defense v. EPA*, 467 F.3d 1329 (D.C. Cir. 2006), the Court of Appeals for the District of Columbia Circuit held that in contrast to the provisions of EPA's rules under review, where a motor vehicle emissions budget developed for the revoked 1-hour ozone NAAQS existed in an approved SIP, the Act requires that 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 NAAQS. EPA reflected 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 2006 PM<sub>2.5</sub> areas that have 1997 PM<sub>2.5</sub> budgets must use them for 2006 PM<sub>2.5</sub> conformity before 2006 PM<sub>2.5</sub> SIP budgets are established. See Section VI of the preamble of the PM Amendments proposed rule (74 FR 23032 – 23035), and the proposed regulatory text in §93.109(k).

The 2006 PM<sub>2.5</sub> areas with adequate or approved 1997 PM<sub>2.5</sub> budgets can determine conformity for both of these NAAQS at the same time. When using the budget test, the regional emissions analysis must be performed for:

- The attainment year for the applicable NAAQS, 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 necessary such that analysis years are no more than ten years apart (40 CFR 93.118(d)).

Note that the analysis years chosen must meet 40 CFR 93.118(d) for each NAAQS. The last year of the transportation plan will be the same regardless of NAAQS, but the attainment years for the two NAAQS will be different. Based on Clean Air Act section 172(a)(2), the attainment year for the 2006 PM<sub>2.5</sub> areas will be 2014, five years after the effective date of designations, (December 13, 2009).<sup>30</sup>

For areas where 1997 PM<sub>2.5</sub> subarea budgets are established, or where 1997 PM<sub>2.5</sub> budgets are established for individual states in a multi-state area, the 2004 multi-jurisdictional guidance addresses how conformity is done. See Section 3.8 for more information. This information is also discussed in the PM Amendments proposed rule at 74 FR 23032 – 23035.

### ***3.8. Multi-jurisdictional 2006 PM<sub>2.5</sub> Areas That Have 1997 PM<sub>2.5</sub> Budgets***

In 2006 PM<sub>2.5</sub> areas that include more than one MPO, an MPO and a donut area, or more than one state, the multi-jurisdictional guidance referenced above provides relevant guidance for preparing conformity determinations. The most relevant information from the multi-jurisdictional guidance has been adapted and included here for 2006 PM<sub>2.5</sub>

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<sup>30</sup> Areas may be eligible for attainment date extensions, which is determined through the SIP process and should not be relevant for the first conformity determination under the 2006 PM<sub>2.5</sub> NAAQS. Please consult the appropriate EPA Regional Office (see Section 1.5) for more information.

areas, but please refer to the multi-jurisdictional guidance for further information regarding how a regional emissions analysis could be completed for these areas.

More than one MPO. Where 1997 PM<sub>2.5</sub> budgets cover more than one MPO, the planning agencies will have to work together to develop one regional emissions analysis for the entire 2006 PM<sub>2.5</sub> area under 40 CFR 93.109(e)(2)(i), just as they have been doing for the 1997 PM<sub>2.5</sub> NAAQS. MPOs must coordinate their plan/TIP conformity determinations and submit them to DOT. Once DOT receives all plan/TIP conformity determinations for the 2006 PM<sub>2.5</sub> area, DOT will make its conformity determinations at the same time.

Subarea budgets. Where subarea budgets<sup>31</sup> exist for the 1997 PM<sub>2.5</sub> NAAQS, EPA believes that these subarea budgets must also be used in the 2006 PM<sub>2.5</sub> conformity determination, because using the existing budgets will ensure that air quality progress to date is maintained. In general, where a 2006 PM<sub>2.5</sub> area has multiple MPOs with subarea budgets for the 1997 PM<sub>2.5</sub> NAAQS, EPA and DOT believe it is necessary for the first conformity determination under the 2006 PM<sub>2.5</sub> NAAQS to be conducted as follows: each MPO would independently demonstrate conformity of its transportation plan and TIP for the 2006 PM<sub>2.5</sub> NAAQS using its 1997 PM<sub>2.5</sub> subarea budgets. All of the MPOs' plan/TIP conformity determinations would be submitted to DOT for DOT to make its conformity determination. DOT will not make a conformity determination on any of the plans or TIPs from the 2006 PM<sub>2.5</sub> area until every MPO in the area has made a conformity determination for its plan and TIP. All MPOs in the 2006 PM<sub>2.5</sub> area must have an initial valid conformity determination for the 2006 PM<sub>2.5</sub> NAAQS by the end of the one-year grace period. If any do not, DOT will be unable to make a 2006 PM<sub>2.5</sub> conformity determination for the 2006 PM<sub>2.5</sub> area, and all of the MPOs' plans and TIPs within that area would lapse.<sup>32</sup>

Multi-state areas. For multi-state 2006 PM<sub>2.5</sub> nonattainment areas, the fact that existing 1997 PM<sub>2.5</sub> budgets must be used preserves states' ability to determine conformity independently from one another, if a state has already established budgets for its own state for the 1997 PM<sub>2.5</sub> NAAQS. In other words, states can operate independently for conformity to the 2006 PM<sub>2.5</sub> NAAQS if they have adequate or approved 1997 PM<sub>2.5</sub> budgets for their portion of the nonattainment area.

Specifically, conformity determinations for the 2006 PM<sub>2.5</sub> NAAQS can be made in one state of a multi-state 2006 PM<sub>2.5</sub> area if it has adequate or approved 1997 PM<sub>2.5</sub> budgets

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<sup>31</sup> Areas may have subarea budgets when there is more than one MPO in a nonattainment area (within one state) per 40 CFR 93.124(d); in this case, each MPO must meet its own subarea budgets. See Part 3 of the multi-jurisdictional guidance for more information.

<sup>32</sup> In general, for subsequent conformity determinations, the MPOs can make conformity determinations independently as long as all other MPOs in the area must have a conforming plan and TIP in place. If one subarea is in a conformity lapse, conformity determinations for new or revised plans and TIPs cannot be made in other subareas until the lapse ends.

even if a lapse is occurring in another state in the 2006 PM<sub>2.5</sub> area, or conformity had not yet been determined for the 2006 PM<sub>2.5</sub> NAAQS in another state in the area.



## **Section 4. Project-level Conformity Requirements in 2006 PM<sub>2.5</sub> Areas**

### ***4.1. Timing of Project-level Conformity Determinations for the 2006 PM<sub>2.5</sub> NAAQS***

The one-year grace period for conformity in newly designated areas described in Section 2.1 of this guidance also applies to project-level conformity determinations (including hot-spot analyses in certain cases) in 2006 PM<sub>2.5</sub> nonattainment areas. At the end of the one-year grace period for conformity, requirements for project-level conformity determinations must be met for the 2006 PM<sub>2.5</sub> NAAQS before any new federal approvals or authorizations for non-exempt FHWA and FTA projects can occur.

For non-exempt FHWA or FTA projects, a conformity determination is typically completed as part of the National Environmental Policy Act (NEPA) process and prior to issuance of a categorical exclusion, finding of no significant impact, or record of decision under NEPA. If a non-exempt project still requires FHWA or FTA approval or authorization after the last day of the one-year grace period, a project-level conformity determination will be required for the 2006 PM<sub>2.5</sub> NAAQS even if the project has already completed the NEPA process, or for multi-phase projects, even if other phases of the project have already been constructed. If no new FHWA or FTA approvals or authorizations are required for a non-exempt project after the end of the one-year grace period, then project-level conformity will not be required for the 2006 PM<sub>2.5</sub> NAAQS.

Before the end of the one-year grace period, FHWA or FTA could choose to make a project-level conformity determination that meets the conformity rule's requirements. Please consult with the FHWA Division and FTA Regional Offices if you have questions concerning how project-level conformity determinations are addressed in the NEPA process.

This information is also found in the PM Amendments proposed rule preamble Section III.B (74 FR 23026-8).

### ***4.2. General Requirements***

The existing conformity requirements that apply to PM<sub>2.5</sub> areas (see Table 1 in 40 CFR 93.109) also apply to 2006 PM<sub>2.5</sub> nonattainment or maintenance areas:

- Project-level conformity determinations. All FHWA/FTA non-exempt projects must have a project-level conformity determination (40 CFR 93.116(a));
- Hot-spot analyses. A PM<sub>2.5</sub> hot-spot analysis is required only for certain kinds of projects (listed at 40 CFR 93.123(b)(1)); in all other cases, a hot-spot analysis is not required (according to 40 CFR 93.116(a)).

- Interagency consultation. The procedures for interagency consultation found in a state's approved conformity SIP or 40 CFR 93.105 must be used in making project-level conformity determinations. See specifically 40 CFR 93.105(c)(1)(i), and refer to Section 2.3 of this guidance for additional information about interagency consultation.
- Compliance with PM<sub>2.5</sub> SIP control measures in approved SIPs, if any. See Section 4.6 below.

#### **4.3. *What is a hot-spot analysis?***

A hot-spot analysis is defined in 40 CFR 93.101 as an estimation of likely future localized PM<sub>2.5</sub> pollutant concentrations and a comparison of those concentrations to the NAAQS. A hot-spot analysis assesses the air quality impacts on a scale smaller than an entire nonattainment area, including for example, congested roadway intersections and highways or transit terminals. Such an analysis is a means of demonstrating that a transportation project meets Clean Air Act conformity requirements to support state and local air quality goals with respect to potential localized air quality impacts.

Note that in the PM Amendments proposed rule, EPA has proposed minor wording changes to the hot-spot rules at 40 CFR 93.116(a). These proposed changes, if finalized, would not affect the substantive requirements in EPA's current hot-spot regulations. See Section IX of the preamble of the May 2009 PM Amendments proposal (74 FR 23037-40) and proposed regulatory text in §93.116(a).

#### **4.4. *Which PM<sub>2.5</sub> NAAQS has to be considered in a hot-spot analysis?***

A hot-spot analysis must consider any PM<sub>2.5</sub> NAAQS for which an area has been designated nonattainment. A hot-spot analysis would have to demonstrate that the project meets the conformity rule's hot-spot requirements for all of the PM<sub>2.5</sub> NAAQS for which the area is designated nonattainment, e.g.:

- if an area is designated nonattainment for only the 2006 24-hour NAAQS, the analysis would have to consider only that NAAQS;
- if an area is designated nonattainment for the 1997 annual NAAQS and the 2006 24-hour NAAQS, the analysis would have to consider both NAAQS;
- if an area is designated nonattainment for both the 1997 annual and 24-hour NAAQS, as well as the 2006 24-hour NAAQS, the analysis would have to consider all of these NAAQS.<sup>33</sup>

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<sup>33</sup> While both 24-hour NAAQS must be considered, in practice if the more stringent 2006 24-hour PM<sub>2.5</sub> NAAQS is met, then the 1997 24-hour PM<sub>2.5</sub> NAAQS is met as well.

EPA and DOT will work with PM<sub>2.5</sub> nonattainment areas as needed to ensure that state and local agencies can meet existing and new conformity requirements for the 2006 PM<sub>2.5</sub> NAAQS in a timely and efficient manner. If you need assistance regarding a hot-spot analysis, see Section 1.5 of this guidance for contact information for EPA regional offices, and the following websites for FHWA division and FTA regional offices, respectively:

<http://www.fhwa.dot.gov/field.html>

[http://www.fta.dot.gov/regional\\_offices.html](http://www.fta.dot.gov/regional_offices.html)

#### **4.5. *Where can I find more information about PM<sub>2.5</sub> hot-spot analyses?***

Please refer to the March 10, 2006 final rule for additional information regarding PM hot-spot analyses (71 FR 12468) and EPA and FHWA's current guidance for implementing this requirement, entitled, "Transportation Conformity Guidance for Qualitative Hot-spot Analyses in PM<sub>2.5</sub> and PM<sub>10</sub> Nonattainment and Maintenance Areas," March 2006, (EPA420-B-06-902). This guidance can be found on EPA's website at:

<http://www.epa.gov/otaq/stateresources/transconf/policy/420b06902.pdf>

The qualitative hot-spot guidance answers questions such as:

- What projects need a PM<sub>2.5</sub> hot-spot analysis?
- What methods can be used for performing qualitative PM<sub>2.5</sub> hot-spot analyses?
- What should be documented for a qualitative PM<sub>2.5</sub> hot-spot analysis?
- What emissions are considered in a PM<sub>2.5</sub> conformity analysis for a project?
- What time frame and analysis years should be used in hot-spot analyses?

Note that the qualitative guidance is to be used for hot-spot analyses until the requirement for quantitative analysis takes effect. During the time that this interim guidance is in effect, PM<sub>2.5</sub> hot-spot analyses will be done qualitatively.<sup>34</sup>

#### **4.6. *Compliance with PM<sub>2.5</sub> SIP Control Measures***

In PM<sub>2.5</sub> areas, the conformity rule at 40 CFR 93.117 requires that before FHWA and FTA projects can be determined to be in conformity, written commitments from the project sponsor or operator to implement any PM<sub>2.5</sub> project-level mitigation or control measures in an approved SIP must be obtained. See EPA's July 2004 final rule for further information on this requirement (69 FR 40036-40037).

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<sup>34</sup> The requirements for quantitative analysis will take effect when EPA releases modeling guidance on this subject and announces it in the *Federal Register*, based on the regulation at 40 CFR 93.123(b)(4). EPA will establish a grace period before quantitative analysis is required. See EPA's website at: <http://www.epa.gov/otaq/stateresources/transconf/policy.htm> for upcoming MOVES SIP and conformity policy guidance, including upcoming quantitative hot-spot modeling guidance.