

implementation plan revision for the 8-hour ozone NAAQS (moderate and above and certain subpart 1 areas), the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO<sub>x</sub>, 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 addresses reasonable further progress that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling on future NO<sub>x</sub> emissions, and the NO<sub>x</sub> motor vehicle emissions budget is a net reduction from NO<sub>x</sub> emissions levels in 2002.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually marginal and below areas) must satisfy one of the following requirements:

(i) The interim emissions tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by § 93.118 must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (d)(1) of this section).

(5) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, moderate and above ozone nonattainment areas with three years of clean data for the 8-hour ozone 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 the 8-hour ozone NAAQS must

satisfy one of the following requirements:

(i) The interim emissions tests as required by § 93.119;

(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 8-hour ozone NAAQS (subject to the timing requirements of paragraph (d)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

(e) *8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area.* This provision applies 1 year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS, according to § 93.102(d). 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 8-hour ozone 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 such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by §§ 93.118 for conformity determinations 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 the 8-hour ozone 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 the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan or maintenance plan for the 8-hour ozone NAAQS is adequate or the publication of EPA's approval of such a budget in the **Federal Register**, one of the following test(s) must be satisfied:

(i) The interim emissions tests as required by § 93.119 for the entire 8-hour ozone nonattainment area; or

(ii) The budget test and interim emissions tests as required by §§ 93.118 and 93.119 as follows:

(A) If the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area, the budget test as required by § 93.118 for the entire 8-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission;

(B) If the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area, the budget test as required by § 93.118 for either the 1-hour nonattainment or 8-hour nonattainment area using the approved or adequate motor vehicle emissions budgets or corresponding portions thereof in the 1-hour ozone applicable implementation plan or implementation plan submission, respectively. If additional control measures are necessary to meet the budget test for the 8-hour ozone NAAQS, such control measures could only be established within the 8-hour nonattainment area; or

(C) If the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the entire or a portion of the 1-hour ozone nonattainment or maintenance area:

(1) The budget test as required by § 93.118 for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets or corresponding portions thereof in the 1-hour ozone applicable implementation plan or implementation plan submission; and

(2) The interim emissions tests as required by § 93.119 for the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO<sub>x</sub>, as required by § 93.119, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan or plan submission contains an