

# **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**

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Final Transportation Conformity Rule**

Conformity Implementation in Multi-Jurisdictional  
Nonattainment and Maintenance Areas for  
Existing and New Air Quality Standards

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

[signed by Suzanne Rudzinski on July 21, 2004]

MEMORANDUM:

From: Suzanne Rudzinski, Director  
Transportation and Regional Programs Division  
Office of Transportation and Air Quality

To: EPA Regional Air Directors, Regions I - X

Subject: 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

**Part 1: Introduction**

1. Q. What is the purpose of this guidance?

A. The Environmental Protection Agency (EPA) published a final transportation conformity rule for the new air quality standards on July 1, 2004 (69 FR 40004)<sup>1</sup>. The final rule describes in general terms how conformity will apply to new nonattainment and maintenance areas under the 8-hour ozone and PM<sub>2.5</sub> standards, and how nonattainment areas for the 8-hour ozone standard will use existing adequate or approved motor vehicle emissions budgets (“budgets”) in state implementation plans (SIPs) prepared for the 1-hour ozone standard. The transportation conformity rule (40 CFR part 93) outlines the procedures for determining whether federally funded or approved highway and transit projects are consistent with (“conform” to) state air quality goals.

Both EPA and the U.S. Department of Transportation (DOT) agree it is necessary to provide additional guidance for conformity implementation to accompany the final rule. EPA is issuing this guidance to clarify how conformity determinations and the regional

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<sup>1</sup> This final rule was signed on June 14, 2004, and was available as of that date, before the effective date of the 8-hour ozone designations. However, EPA uses the *Federal Register* publication date when referring to a rule, so that readers know in which *Federal Register* issue to find it.

emissions analyses that support them are completed in existing and new nonattainment and maintenance areas, particularly those where multiple agencies or states are involved.

This guidance covers questions such as:

- ▶ What geographic area is covered by the conformity determination and regional emissions analysis?
- ▶ How can the regional emissions analysis be implemented?
- ▶ Who does what to develop the regional emissions analysis?
- ▶ What regional emissions test or tests apply for 8-hour ozone nonattainment areas with 1-hour ozone SIP budgets?

This guidance covers both existing nonattainment and maintenance areas as well as areas that are designated nonattainment under the new standards, and highlights opportunities for flexibility wherever possible. It provides examples and interpretations for generic scenarios that are present in the field and that are expected to occur under the new standards. It expands on the July 1, 2004, final rule by including additional detail, examples, and pictorial representations. However, there may be other cases in the field that this guidance does not address. In the event an area's circumstances are not covered in this guidance, EPA, together with DOT, will work with implementers on a case-by-case basis.

This guidance also stresses the importance of the interagency consultation in the conformity process. Given the fact that no two areas that implement conformity are exactly alike, the interagency consultation process can be used to make the best choices for an area's circumstances, where the rule provides flexibility. The interagency consultation provision of the conformity rule, §93.105, requires that general processes be established for, and specific decisions be made through, interagency consultation.

DOT, our federal partner in developing and implementing the conformity rule, assisted in the development of this guidance and concurred on its content.

2. Q. Who can answer questions related to this guidance?

A. For specific questions about circumstances in particular nonattainment or maintenance areas, the EPA Regional Offices, the FHWA Division Offices, and the FTA Regional Offices are the first point of contact. A list of EPA Regional conformity staff can be found on the web at: <http://www.epa.gov/otaq/transp/conform/contacts.htm> .

General questions about this guidance can be directed to Laura Berry, a member of my staff at EPA's Office of Transportation and Air Quality, via her email address: [berry.laura@epa.gov](mailto:berry.laura@epa.gov) or phone number: 734-214-4858.

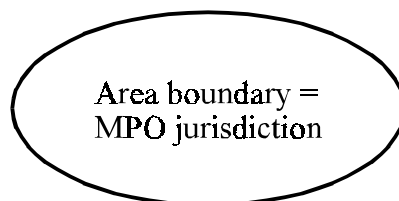
3. Q. Does this guidance create new conformity requirements?

A. No. This guidance is based on conformity implementation precedent to date and the July 1, 2004, final rule. This document provides guidance to EPA Regional Offices, FHWA Divisional Offices, FTA Regional Offices, state and local agencies, and the general public on how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions for determining conformity in multi-jurisdictional areas. The guidance is designed to clarify and transmit national policy on these issues. The statutory provisions and EPA regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, states, or the regulated community, and may not apply to a particular situation based upon the circumstances.

This guidance is based on conformity precedent and interpretations made to date. EPA is issuing this guidance so that the precedents are gathered in one place as a reference for conformity implementers. EPA retains the discretion to adopt approaches on a case-by-case basis that may differ from this guidance, but still comply with the statute and conformity regulations. Any decisions regarding a particular conformity determination will be made based on the statute and regulations. This guidance is a living document and may be revised periodically without public notice.

4. Q. What do we mean by multi-jurisdictional nonattainment and maintenance areas?

A. To answer this question, first it is useful to describe a conformity determination in the case where there is a single jurisdiction responsible for transportation planning, and a single jurisdiction responsible for air quality planning. In the simplest case, a nonattainment or maintenance area is located entirely within one state, and the boundary of the nonattainment/maintenance area is exactly the same as the metropolitan planning organization (MPO) boundary, as in Figure 1 below.



**Figure 1: A Nonattainment or Maintenance Area With One MPO in a Single State**

The MPO is the agency that is responsible for preparing metropolitan transportation plans (“plans”) and transportation improvement programs (TIPs) and demonstrating that plans and TIPs conform before they are adopted. An MPO is established for each metropolitan area that has an urbanized population of 50,000 or more according to Section 134 of Title 23, United States Code and Section 5303 of Title 49, United States Code. Section 93.101 of the conformity rule includes the following definition of an MPO:

“that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.”

In most cases, a conformity determination for a transportation plan, TIP, or project not from a plan or TIP includes a regional emissions analysis in which emissions from the planned transportation system are estimated according to §93.122 of the conformity rule. In the case where an MPO’s boundaries are the same as the nonattainment (or maintenance) area’s boundaries, the MPO is responsible for the regional emission analysis in the entire area.

However, the boundaries of an MPO do not always correspond to the nonattainment or maintenance area boundary, nor does a nonattainment or maintenance area always contain one single MPO. Furthermore, a nonattainment or maintenance area boundary may encompass portions of more than one state. The conformity rule does not dictate how MPO planning boundaries are established; MPOs are established according to Titles 23 and 49 of the U.S. Code (as cited above) and DOT’s metropolitan planning regulations. Therefore, there may be more than one MPO responsible for transportation planning, and thus conformity determinations, in a nonattainment or maintenance area, as in Figure 2 below.

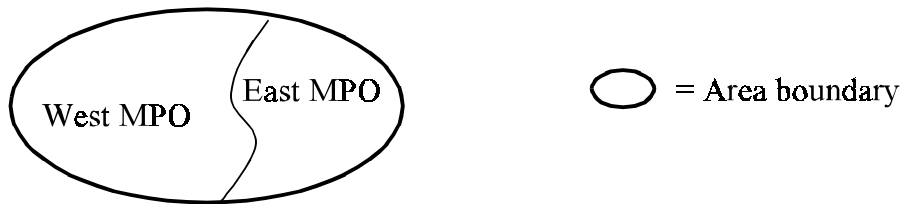


Figure 2: A Nonattainment or Maintenance Area with Two MPOs, in a Single State

Or, there may be some portion of the nonattainment or maintenance area that is not included in an MPO's jurisdiction, also known as a "donut area" under the conformity rules. According to §93.101 of the conformity rule:

"Donut areas are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas."

Though the word "donut" implies that the boundary of the MPO would be entirely within the nonattainment or maintenance area boundary to form two concentric circles, a nonattainment or maintenance area's donut area may more typically resemble that in Figure 3 below.

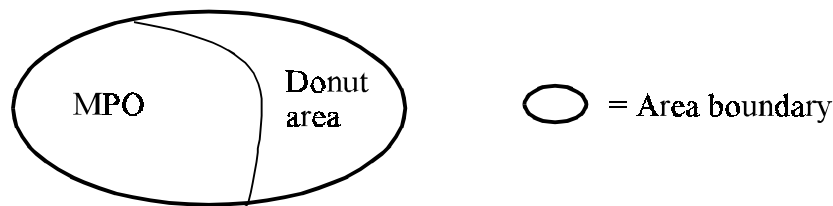


Figure 3: A Nonattainment or Maintenance Area With a "Donut" Area in a Single State

There are also cases where a nonattainment or maintenance area's boundary includes parts of more than one state, as in Figure 4 below. One MPO may cover the entire multi-state nonattainment or maintenance area, or MPOs may be established for each state's portion of the area. In these situations, states may submit SIPs with identical budgets for the entire nonattainment or maintenance area, or may submit SIPs with budgets that cover only their state's portion of the area.

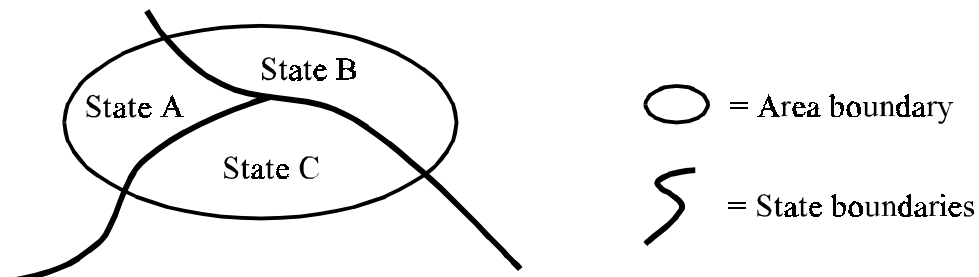


Figure 4: A Multi-State Nonattainment or Maintenance Area (Area Could Have One or More MPOs)

Finally, there are some MPOs in the country which are responsible for transportation planning in more than one nonattainment area. This guidance does in general apply to such MPOs. The November 24, 1993, conformity rule addresses the case where an MPO is responsible for more than one nonattainment area, which continues to apply:

“If a metropolitan planning area includes more than one nonattainment area, a conformity determination must be made for each nonattainment area. Emissions budgets established in the SIP(s) for the included nonattainment areas may not be combined or reallocated. Build/no-build tests must be applied separately in each nonattainment area” (58 FR 62208).

Whether a nonattainment or maintenance area contains more than one MPO, a donut, or is located within more than one state, the conformity process includes flexibility to accommodate many differences in state and local agency roles and planning processes across the country.

5. Q. How is this guidance organized?

A. The remaining parts of this guidance cover how conformity determinations and regional emissions analyses that support them are done in nonattainment and maintenance areas (“areas”), in the following circumstances:

- **Part 2** covers conformity determinations and regional emissions analyses before an area has SIP budgets for conformity. Part 2 applies to all nonattainment areas where transportation conformity is required for existing and new air quality standards, except 8-hour ozone nonattainment areas with adequate or approved SIP budgets for the 1-hour ozone standard (“1-hour budgets”);
- **Part 3** covers conformity determinations and regional emissions analyses after SIP budgets are adequate or approved for the applicable pollutant and standard, and applies to all existing and newly designated areas where transportation conformity is required; and
- **Part 4** covers conformity determinations and regional emissions analyses in 8-hour ozone nonattainment areas that have 1-hour budgets, before such areas have adequate or approved SIP budgets for the 8-hour ozone standard.



**Part 2: Conformity Determinations and Regional Emissions Analyses Before SIP Budgets Are Adequate or Approved**

1. Q. To what areas does this part of the guidance apply?

Part 2 of this guidance applies to areas designated nonattainment for a pollutant identified in §93.102(b) of the conformity rule that do not yet have budgets for a standard that can be used in conformity. Some examples of areas include:

- all PM<sub>2.5</sub> nonattainment areas before PM<sub>2.5</sub> SIP budgets are found adequate or approved;
- 8-hour ozone areas without adequate or approved 1-hour ozone SIP budgets, before 8-hour ozone SIP budgets are found adequate or approved;
- any 1-hour ozone, carbon monoxide, or PM<sub>10</sub> nonattainment area that has no adequate or approved budgets for that standard.

This part of the guidance does not cover:

- 8-hour ozone nonattainment areas without adequate or approved 8-hour budgets, but with adequate or approved 1-hour budgets; please refer to Part 4 of this guidance.
- maintenance areas, as these areas by definition have approved SIPs with budgets.<sup>2</sup>

2. Q. What tests are used for the regional emissions analysis before a nonattainment area has motor vehicle emissions budget(s) that are adequate or approved?

A. Conformity applies for an air quality standard one year after the effective date of EPA's nonattainment designation for that standard. EPA generally believes that conformity will apply for a standard before an area is able to submit a SIP for that standard containing budgets and those budgets are found adequate. Section 93.119 of the conformity rule provides direction for how the regional emissions analysis must be done before budgets are available. During this time period, these areas must use the interim emissions test or tests: the build/no-build test, and/or the baseline year test.

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<sup>2</sup>A maintenance area could have a special type of maintenance plan called a limited maintenance plan. Please see the July 1, 2004, final rule at 69 FR 40063 and the June 30, 2003, proposed rule at 68 FR 38983-4 for more information about conformity and limited maintenance plans.

3. Q. What geographic area must be examined in regional emissions analyses and conformity determinations before a nonattainment area has adequate or approved budgets?

A. In this case, a conformity determination for a transportation plan, TIP, or project not from a plan or TIP must be based on a regional emissions analysis that covers the entire nonattainment area, to satisfy the statute and regulations. Section 93.122(a)(1) of the conformity rule states:

“the regional emissions analysis required by §§93.118 and 93.119 for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area.”

There must be a regional emissions analysis for the entire nonattainment area, whether the nonattainment area includes one MPO or more than one MPO, a donut area, portions of more than one state, or any combination of these jurisdictions. Please see the next Q & A for the options in creating a regional emissions analysis for an entire area.

For all nonattainment areas covered by Part 2 of the guidance, the MPO(s) must coordinate their plan/TIP conformity determinations together, pursuant to §93.124(d) of the final conformity rule. In the November 24, 1993, final rule, EPA stated:

“Where a nonattainment area includes multiple MPOs, the control strategy SIP may either allocate emissions budgets to each metropolitan planning area, or the MPOs must act together to make a conformity determination for the nonattainment area.”

Once DOT receives all plan/TIP conformity determinations for a given nonattainment area, DOT will make its conformity determinations at the same time. In order for one MPO to update or revise its plan and TIP, a DOT conformity determination for each plan and TIP in that nonattainment area must be made at the same time, according to §93.124(d) of the rule.

EPA believes that it is necessary for the conformity determinations and regional emissions analysis to include the entire nonattainment area when there are no SIP budgets to ensure that the requirements of Clean Air Act section 176(c)(1) are met. That is, before SIP budgets are available, in order to determine that transportation activities will not cause a new air quality violation, increase the frequency or severity of a violation, or delay timely attainment or any other milestone in the nonattainment area, it is necessary to consider emissions from the entire area in one regional emissions analysis, and for DOT to make all plan/TIP conformity determinations at the same time.

4. Q. How can multiple jurisdictions create a regional emissions analysis for the entire nonattainment area?

A. The agencies involved in the conformity process in a nonattainment area where there is more than one MPO or a donut area must use the consultation process required by §93.105 of the conformity rule to decide how best to meet this requirement, regardless of whether the area is within one state or is a multi-state area. The consultation process would be used to decide which interim emissions tests apply and what analysis years are used. MPOs must use the same tests and analysis years for the entire nonattainment area, as described in the next Q&A.

Nonattainment Areas With More Than One MPO, In One or More States:

In nonattainment areas where there is more than one MPO, the MPOs can develop the regional emissions analysis for the area in either one of two ways:

1. by separate modeling by each MPO that is combined into one regional analysis; or
2. by one modeling analysis for the entire nonattainment area.

If MPOs in the nonattainment area want to model their emissions separately, each MPO would do a regional emissions analysis that includes the existing transportation system in its part of the nonattainment area as well as all new projects in its plan and TIP. Each MPO would show that the applicable interim emissions test(s) are met for each analysis year under the regulations. These results would then be compiled in one regional emissions analysis for the entire nonattainment area that would accompany each plan/TIP conformity determination. The MPOs in the nonattainment area can work independently to complete the regional emissions analysis for their own parts of the area, but a single analysis would be compiled for the entire nonattainment area to satisfy conformity requirements for an MPO's plan/TIP.

Alternatively, the regional emissions analysis could be completed by showing that the emissions in each analysis year for the entire nonattainment area meet the applicable interim emissions test(s). The MPOs in the area would work together to carry out a regional emissions analysis for the entire nonattainment area that includes all of their plans and TIPs. Again, these modeling results would be presented in one regional emissions analysis for the entire nonattainment area that would accompany the conformity determinations for new or revised plans/TIPs in the nonattainment area.

As an example, suppose there are multiple MPOs within a nonattainment area and they are demonstrating conformity using the build/no-build test. If each MPO has its own travel demand model and prefers to run its own analysis, the analysis must show either that each MPO passes its own build/no-build test; or the "build" scenarios and the "no-build" scenarios from each MPO must be aggregated, and the total "build" emissions from all MPOs must be less than the total "no-build" emissions from all MPOs.

Alternatively, the MPOs could initially create one regional emissions analysis for the entire nonattainment area that meets the build/no-build test.

In either case, to make the demonstration required by the conformity rule, all MPOs must use the same test and the same analysis years for the regional emissions analysis. MPOs in one nonattainment area may want to coordinate their plan and TIP update cycles as well as the length of their plans, as described in the following bullets.

- ▶ New or revised plans and TIPs, as well as significant changes to projects, could require a new regional emissions analysis (see §§93.104 and 93.122(g) of the conformity rule). Coordination of plan and TIP update cycles among MPOs in the same nonattainment area may minimize the number of new regional emissions analyses and conformity determinations that have to be completed.
- ▶ Different transportation plan lengths within one nonattainment area would require additional analysis years, because according to §93.119(g), an analysis must be performed for the last year of each plan. For example, if one MPO's plan ends in 2025 and another MPO's plan ends in 2030, both years would have to be analyzed in the regional analysis for the entire nonattainment area. Coordination of plan lengths may minimize the number of analysis years that have to be examined in any one regional emissions analysis.

#### Nonattainment Areas With a Donut Area:

If there is only one MPO in the nonattainment area conducting conformity determinations, the conformity rule requires the MPO to include the emissions estimated from the donut area's existing and proposed transportation system in the regional emissions analysis for metropolitan transportation plan and TIP conformity determinations. However, either the MPO or the state transportation agency ("state DOT") could estimate emissions from the donut area as decided through interagency consultation, as explained in Q&A 7 of this part.

If there is more than one MPO as well as a donut area in a nonattainment area, the MPOs must work together and with the state DOT as appropriate to create one regional emissions analysis for the entire nonattainment area that would accompany each plan/TIP conformity determination. The emissions estimated from the entire area must meet the interim emissions test or tests, according to the requirements of §93.119. Again, the consultation process would be used to coordinate the choice of tests and analysis years when several agencies are completing emissions analyses, because the same tests and analysis years must be used as noted above.

5. Q. What decisions must be made in the interagency consultation process?

A. The agencies responsible for the conformity determination and regional emissions analysis in a nonattainment area, which are the MPOs and possibly the state DOT(s) for donut area in a nonattainment area, should use the interagency consultation process to make certain decisions. Under the conformity rule, there are some aspects of conformity that must be consistent across the nonattainment area, even when there are more than one MPO and they each model their own portion separately, as described above. These include:

- timing of plan and TIP conformity determinations, so that DOT can make its conformity determinations for all plans and TIPs in a nonattainment area at the same time;
- how the regional emissions analysis is developed, i.e., whether emissions will be modeled for each MPO's jurisdiction separately and summed together, or modeled for the nonattainment area as a whole;
- the interim emissions test the nonattainment area will meet, in the areas that must meet only one test as required by §93.119 (e.g., PM<sub>2.5</sub> areas or 8-hour ozone areas that are classified as marginal or designated under Clean Air Act, part D, subpart 1 that do not have 1-hour budgets).

EPA believes that for consistency and in order to satisfy the conformity rule, the same test must be used in all portions of the nonattainment area in areas that have the choice of interim emissions tests. In other words, it would not be acceptable for one MPO to use the build/no-build test and another MPO within the same nonattainment area to use the baseline year test, because the rule requires that one test be met for the entire nonattainment area, according to §§93.119 and 93.124(d),<sup>3</sup>

- the analysis years for the interim emissions test(s), as required by §93.119(g).

Again, EPA believes that analysis years must be consistent in all portions of the nonattainment area, even if emissions are modeled for each MPO's jurisdiction separately, otherwise they cannot be summed together to produce a complete analysis to satisfy the test. Regional emissions analyses for all MPOs must cover

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<sup>3</sup>In 8-hour and 1-hour ozone areas classified moderate or higher, serious CO, and moderate CO areas with a design value greater than 12.7 ppm, both interim emissions tests must be met under §93.119. Please read Section IV.D. of the preamble of the July 1, 2004, final rule for further explanation.

the same time period and thus need to include the last year of each transportation plan.

As described in the above example, in a nonattainment area with two MPOs where one MPO's transportation plan covers a 25-year period from 2005 to 2030, and the other MPO's plan covers only a 20-year period from 2005 to 2025, the regional emissions analysis for both MPOs must examine emissions in the years 2025 and 2030; and

- the emissions model used for the interim emissions test(s), in the case where there is more than one emissions model version that could be used, per §93.111 of the rule.

In addition, the MPO jurisdictions involved in the conformity determination(s) for the nonattainment area should discuss the planning assumptions they will use in the regional emissions analysis and the sources of that information. Section 93.105(c)(1)(i) of the rule specifically requires that planning assumptions be discussed in the interagency consultation process. Where feasible and appropriate, MPOs and where applicable, state DOTs should use consistent planning assumptions for the regional emissions analysis in their jurisdictions.

6. Q. In a nonattainment area that does not have SIP budgets for conformity, if one MPO in the area can meet the requirements of §93.119 of the rule, but another MPO or a donut area cannot, can the MPO that meets the requirements show that its plan and TIP conform and proceed?

A. No. EPA believes that before budgets are adequate or approved, the whole nonattainment area must conform to meet the Clean Air Act 176(c)(1) requirements. These requirements are that transportation activities will not:

- ▶ cause a new air quality violation,
- ▶ increase the frequency or severity of a violation, or
- ▶ delay timely attainment or any other milestone in the area for an air quality standard.

It is necessary to estimate emissions from the entire nonattainment area in all plan/TIP conformity determinations and the supporting regional analysis because separate SIP budgets are not yet available. For example, in Figure 2 repeated below, there are two MPOs. If they choose to model their emissions separately and West MPO appears to pass the applicable test(s) of §93.119 but East MPO does not, West MPO cannot proceed to determine conformity alone. It cannot be known for sure that West MPO's transportation plan and TIP would not cause a new violation, increase the frequency or severity of a

violation, or delay timely attainment (or other milestone) in the area, because East MPO cannot also pass the test. Thus, the nonattainment area in this example as a whole cannot demonstrate that it will not cause or contribute to violations. To resolve this situation,

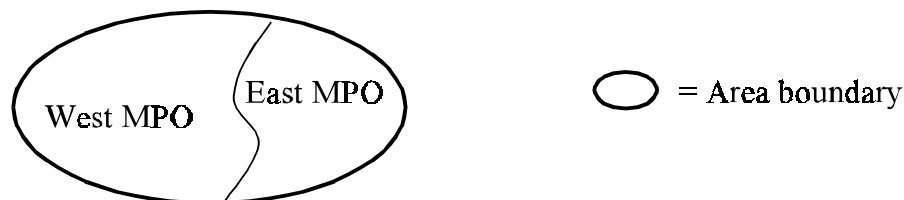


Figure 2: A Nonattainment Area With Two MPOs

East and West MPOs would consult on what options are available for demonstrating conformity, including the option of adding or modeling their emissions together to see if they pass the applicable regional emissions test(s).

7. Q. Who is responsible for estimating emissions in a donut area of a nonattainment or maintenance area?

A. In a nonattainment or maintenance area with a donut area, the lead agency for developing the regional emissions analysis that applies to the donut area can be:

- the MPO within the nonattainment area. In some cases, an adjacent MPO is better suited to conduct such an analysis. An MPO could run an analysis for the donut area's projects, or include the donut area's projects in the regional emissions analysis supporting its plan and TIP. An MPO could also include the donut area's projects in its plan and TIP, but this practice is not common;
- the state DOT. In some cases, the state DOT may take the lead in conducting regional emissions analysis for the donut area; or
- another local planning agency. In limited cases, another local planning agency in the donut area (e.g., a county planning commission) may also be the lead agency for the donut area.

Section 93.105(c)(3) of the conformity rule relies on the interagency consultation process (including the MPO and state DOT) to determine how best to consider projects that are planned for donut areas located outside the metropolitan area and within the nonattainment or maintenance area in the conformity process. Section 93.105 also requires that such procedures for demonstrating conformity of donut area projects be included in an area's conformity SIP that is approved by EPA according to §51.390 of the rule.

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**Part 3: Conformity Determinations and Regional Emissions Analysis Once SIP Budgets Are Adequate/Approved**

General

1. Q. To what areas does this part of the guidance apply?

A. Part 3 applies to areas designated nonattainment for any pollutant identified in §93.102(b) of the rule, once the area has adequate or approved budgets from a SIP addressing a particular standard for a pollutant. This part of the guidance applies to:

- an 8-hour ozone nonattainment area once it has adequate or approved budgets for the 8-hour standard, regardless of whether or not the area had 1-hour budgets;
- a PM<sub>2.5</sub> nonattainment area once it has adequate or approved PM<sub>2.5</sub> SIP budgets;
- any 1-hour ozone, carbon monoxide, or PM<sub>10</sub> nonattainment area that has adequate or approved budgets from a SIP addressing that standard; and
- maintenance areas, as these areas by definition have approved SIPs with budgets.<sup>4</sup>

2. Q. How do nonattainment and maintenance areas determine conformity for a given standard once adequate or approved SIP budgets are available for that standard?

A. Clean Air Act section 176(c)(1) states that federal activities must conform to the SIP. Once a SIP with budgets has been submitted and EPA finds the budgets adequate or approves the SIP, the “budget test” using the new budgets must be used for conformity determinations according to §§93.109 and 93.118 of the conformity rule. EPA’s adequacy finding or approval means that the SIP’s budgets are an appropriate measure for whether transportation activities conform due to many factors, including:

- the budgets are identified and precisely quantified;
- the budgets are consistent with the SIP’s purpose of reasonable further progress, attainment, or maintenance of an air quality standard; and

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<sup>4</sup>A maintenance area could have a special type of maintenance plan called a limited maintenance plan. Please see the July 1, 2004, final rule at 69 FR 40063 and the June 30, 2003, proposed rule at 68 FR 38983-4 for more information about conformity and limited maintenance plans.

- the budgets are consistent with and clearly related to the emissions inventory and the control measures in the SIP.<sup>5</sup>

3. Q. What geographic areas might budgets from a SIP address, and how is conformity generally determined in multi-jurisdictional areas with SIP budgets?

A. In a nonattainment or maintenance area located entirely within one state, the state air agency may develop a SIP that establishes either:

- a budget (or budgets) that applies to the entire nonattainment or maintenance area, or
- a subarea budget (or budgets) for each MPO within the nonattainment or maintenance area.

In a multi-state nonattainment or maintenance area, the state air agencies may decide to establish SIPs in each state that contain either:

- identical budgets that apply to the entire nonattainment or maintenance area, or
- unique budgets that apply only to one state's portion of the nonattainment or maintenance area.

State and local agencies can develop SIPs in many different ways. Section 93.124(d) of the conformity rule acknowledges this fact and covers SIPs developed in areas where there is more than one MPO:

“If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire area.”

Once budgets have been found adequate or approved, the conformity determination(s) and regional emissions analysis is done for the geographic area that is addressed by the budgets in the SIP. This general principle applies in all situations, although there is flexibility in how the regional emissions analysis is developed, and in coordinating conformity determinations, when several MPOs are involved. The table on the next page summarizes the general situations. The questions and answers that follow provide further detail on the different circumstances that can occur.

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<sup>5</sup> There are other criteria that SIP budgets must meet for EPA to find them adequate; for the full list of adequacy criteria, see §93.118(e) of the conformity rule.

Summary Table: How SIPs Affect Geographic Areas Considered in Conformity

For a nonattainment or maintenance area located:	where SIP budgets are established for:	the geographic area considered in regional analysis is:	the geographic area considered in final conformity determination(s) is:
within one state	the entire area	the entire area*	the entire area**
within one state	subareas	each subarea	each subarea
in multiple states	the entire area	the entire area*	the entire area**
in multiple states	each state	each state	each state

\* There is flexibility in how the regional emissions analysis is done when there is more than one MPO. See below for more details.

\*\* There may be more than one plan/TIP conformity determination in a nonattainment or maintenance area because there may be more than one MPO making determinations for separate plans and TIPs. There is flexibility in how these conformity determinations are coordinated. See below for more details.

#### Nonattainment or Maintenance Areas Located in One State, Where Budgets Are Established for the Entire Area

4. Q. How is conformity done when budgets are established for an entire nonattainment or maintenance area that is within one state?

**One MPO.** In the simplest case, an area is located entirely within one state and the MPO boundary is the same as the nonattainment/maintenance area boundary (Figure 1). In Figure 1, the nonattainment or maintenance area boundary, the MPO, and the SIP budgets all address the same geographic area. In this case, because the SIP establishes budgets for the entire area, the MPO will use those budgets in the regional emissions analysis done for the MPO's plan/TIP conformity determination for the entire nonattainment or maintenance area.

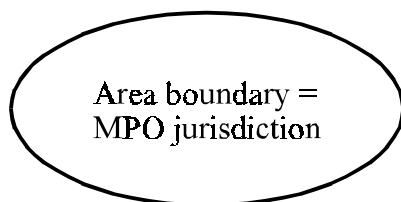


Figure 1: A Nonattainment or Maintenance Area With One MPO  
in a Single State

**More than One MPO.** When budgets are established for the nonattainment or maintenance area as a whole, and there is more than one MPO, the MPOs would complete their respective plan/TIP conformity determinations and submit them to DOT, as explained in Part 2, Q & A 3. Once all determinations for a given area are received, DOT would make its conformity determinations at the same time. The MPOs must collectively develop a regional emissions analysis for the entire area that meets the requirements of §93.118 of the rule that would accompany all plan/TIP conformity determinations. For example, all MPOs would have to use the same analysis years for the regional emissions analysis. Each MPO would show conformity of its plan and TIP using the regional emissions analysis done for the entire area. See Part 2, Q & A 4 for more information.

The MPOs can develop the regional analysis for the area in either one of two ways:

1. Each MPO can model emissions for its geographic part of the nonattainment or maintenance area separately. For each analysis year, the emissions estimated by each MPO would be summed together and compared to the area's applicable budgets. EPA believes that the MPOs must all use the same analysis years when completing the budget test in accordance with §93.118.
2. The MPOs could also work together to model the entire nonattainment or maintenance area as a whole at the same time. In this case, §93.118 of the conformity rule would be met if estimated emissions in each analysis year are less than or equal to the area's applicable budgets.

MPOs in one nonattainment or maintenance area may want to coordinate their plan and TIP update cycles as well as the length of their plans.

- ▶ New or revised plans and TIPs, as well as significant changes to projects, could require a new regional emissions analysis (see §§93.104 and 93.122(g) of the conformity rule). Coordination of plan and TIP update cycles among MPOs in the same nonattainment or maintenance area may minimize the number of new regional emissions analyses and conformity determinations that have to be completed.

- ▶ Different transportation plan lengths within one nonattainment or maintenance area would require additional analysis years, because according to §93.118(d), an analysis must be performed for the last year of each plan. For example, if one MPO's plan ends in 2025 and another MPO's plan ends in 2030, both years would have to be analyzed in the regional analysis for the entire nonattainment area. Coordination of plan lengths may minimize the number of analysis years that have to be examined in any one regional emissions analysis.

**One or More MPOs and a Donut Area:** If there is only one MPO in the nonattainment or maintenance area conducting conformity determinations, the regulations require the MPO to include the emissions estimated from the donut area's existing and proposed transportation system in the regional emissions analysis for the metropolitan transportation plan and TIP conformity determinations. However, either the MPO or the state transportation agency ("state DOT") could estimate emissions from the donut area as decided through interagency consultation, as explained in Part 2, Q&A 7.

If there is more than one MPO as well as a donut area in a nonattainment or maintenance area, the MPOs must work together and with the state DOT or other donut area agency as appropriate to create one regional emissions analysis for the entire area that would accompany all plan/TIP conformity determinations. The emissions estimated from the entire area must be less than or equal to the budget(s) established for the entire area, according to the requirements of §93.118. The consultation process would be used to coordinate the analysis years when several agencies are completing emissions analyses, because the same analysis years must be used.

#### Nonattainment or Maintenance Areas Within One State, Where the SIP Establishes Subarea Budgets

5. Q. How do nonattainment or maintenance areas with more than one MPO in a single state determine conformity once SIP budgets are adequate or approved, and the SIP establishes subarea budgets for each MPO?
  - A. When subarea budgets are created for each MPO, the sum of the subarea budgets equals the total amount of emissions the area can have from the transportation sector and still make progress toward, attain, or maintain the standard. Therefore, if each MPO meets its subarea budgets for a pollutant and standard in accordance with the requirements of §93.118, then the entire area meets the total SIP's purpose for that pollutant and standard. As EPA noted in the January 11, 1993, conformity proposal,

“subarea budgets provide additional assurance that through future conformity determinations transportation plans and TIPs will produce emission patterns that will achieve attainment” (58 FR 3780).

When the SIP for an area establishes subarea budgets for conformity purposes, these subarea budgets must be met for plans and TIPs in the area to conform, as required in §93.124(c) and (d) of the conformity rule. Section 93.124(c) states:

“If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.”

The MPOs can make independent conformity determinations for their plans and TIPs as long as all of the other subareas in the nonattainment or maintenance area have conforming transportation plans and TIPs in place at the time of each MPO’s and DOT’s plan/TIP determination. In other words, under the conformity rule in order for an MPO or DOT to determine conformity for its subarea, the rest of the area must also be in conformity. The preamble to the November 24, 1993, conformity rule explains this as follows:

“The SIP may specify emissions budgets for subareas of the region, provided that the SIP includes a demonstration that the subregional emissions budget, when combined with all other portions of the emissions inventory, will result in attainment and/or maintenance of the standard. The conformity determination must demonstrate consistency with each subregional emissions budget in the SIP” (58 FR 62196).

Thus, when any subarea demonstrates conformity, it must be demonstrated that all subareas have conforming plans and TIPs. For example, suppose the subarea budgets in a SIP have just been found adequate, and one of the MPOs in the area needs to update its TIP. That MPO can make a conformity determination using its subarea budgets for the first time without waiting for the other MPOs in the area, as long as the other MPOs have conforming plans and TIPs in place, even if these plans and TIPs were previously found to conform using the interim emissions test(s).

Once an area has adequate or approved subarea budgets, if conformity lapses<sup>6</sup> for one subarea, the other subarea(s) can continue to implement projects in their currently conforming plans and TIPs, but they cannot make new plan and TIP conformity determinations until the lapse is resolved and conformity is determined in the lapsed subarea. In other words, if the conformity status of one subarea lapses, the existing plans and TIPs in other subareas continue to be valid and consequences would not apply to any other subareas unless the lapse is not resolved by the time other subareas need to make new conformity determinations.

6. Q. Why can't an MPO that has its own subarea budgets determine conformity of its transportation plan and TIP when another MPO in the same area is in a lapse?

A. Section 176(c) of the Clean Air Act clearly states that conformity applies in nonattainment and maintenance areas, rather than individual metropolitan planning areas. Section 176(c) also states that the federal government and MPOs cannot approve transportation activities unless they conform to the SIP and its budgets. Therefore, in a nonattainment or maintenance area with more than one MPO, all MPOs must conform even if the SIP has established subarea budgets.

If an individual MPO lapses, it has not demonstrated that it can conform to its subarea budgets. Therefore, there is no way for the other MPOs in the same area to know whether their transportation plans and TIPs are consistent with the SIP as a whole. Using Figure 2 again as an example (found in Part 2, Q & A 6), if East MPO is in a conformity lapse, it cannot be assured that West MPO's transportation activities still meet the purpose of the SIP even if West MPO meets its subarea budgets. That is, it is unknown whether the total amount of emissions in the area from the planned transportation sector would still meet the SIP's purpose of progress toward, attainment of, or maintenance of the standard, because East MPO cannot meet its subarea budgets. When one subarea lapses, there is no way for the other MPO to show that their planned transportation activities would conform to the SIP for the whole area until the lapse is resolved.

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<sup>6</sup>A lapse is defined in §93.101 of the rule: "*Lapse* means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan or TIP." A lapse occurs when conformity of a plan or TIP is not determined according to the frequency requirements of §93.104 of the conformity rule.

7. Q. How do I know whether the SIP establishes subarea budgets? Are county-by-county emissions projections subarea budgets?

A. The SIP must specifically state that it creates subarea budgets. County-by-county emissions projections in a SIP inventory are not subarea budgets unless they are specifically labeled as such. Section 93.124(c) of the conformity rule states,

“If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.”

If county level emissions projections are included in a SIP but not explicitly defined as subarea budgets for the purposes of conformity, the SIP is considered to have budgets for the entire area and MPOs must work together to have plan/TIP conformity determinations for the entire nonattainment or maintenance area approved by DOT at the same time, as described above in Q & A 4 of this part and Part 2, Q & A 4. According to §93.124(d),

“If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.”

If MPOs within one nonattainment or maintenance area would prefer to have subarea budgets, they should communicate their preference to the state and local air agencies within the interagency consultation process during the development of the SIP. Section 93.105(c) of the conformity rule requires interagency consultation on the development of SIPs, as well as transportation plans, TIPs, and conformity determinations.

#### Multi-State Nonattainment/Maintenance Areas:

8. Q. How do multi-state nonattainment and maintenance areas determine conformity if each state submits a SIP that contains the same budgets for the entire multi-state area?

A. If these multi-state areas have SIPs that contain budgets for the multi-state area as a whole, one regional emissions analysis would be completed for the entire area using the budget test, according to the requirements in §93.118 of the conformity rule. This regional analysis would accompany all plan/TIP conformity determinations in the area that would be submitted to DOT. Once all determinations for a given area are received, DOT would make its conformity determinations at the same time. The MPOs must collectively



develop a regional emissions analysis for the entire area that meets the requirements of §93.118 that would accompany all plan/TIP conformity determinations. For example, all MPOs would have to use the same analysis years for the regional emissions analysis. Each MPO would show conformity of its plan and TIP using the regional emissions analysis done for the entire area.

For example, in Figure 4, repeated below, suppose there is one budget for the multi-state area, but each state has its own MPO. In this case, one regional emissions analysis would be made for the entire oval and the conformity determinations for each MPO's plans and TIPs within the area would be based on this regional emissions analysis. DOT would wait to make its conformity determinations for the plans and TIPs in the area until it receives all of them. This answer is similar to single state areas with SIP budgets that cover the entire nonattainment or maintenance area. See Q & A 4 of the part, and Part 2, Q & A 4, for further information.

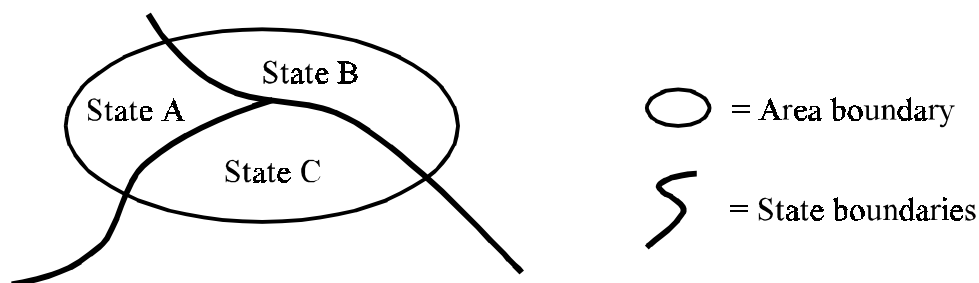


Figure 4: A Multi-State Nonattainment or Maintenance Area

9. Q. When would it be likely for state air agencies in a multi-state nonattainment or maintenance area to submit SIPs with budgets that apply to the entire area?

A. This option would most likely be chosen in areas where there is one MPO responsible for the transportation planning of the entire multi-state nonattainment or maintenance area. However, the option is available to any multi-state nonattainment or maintenance area. In areas with more than one MPO, additional coordination would be necessary for plan/TIP conformity determinations and the regional emissions analysis because they would need to cover the entire nonattainment or maintenance area pursuant to §§93.124(d) and 93.118.

10. Q. How is conformity determined for multi-state nonattainment or maintenance areas when each state submits a SIP that contains budgets only for its state's portion of the area?

A. States in a multi-state area have the option of submitting SIPs with budgets for just their own portion of the area that, when taken together, meet the applicable Clean Air Act requirement. Where states have done so and EPA has found such budgets adequate, the MPO or MPOs in each state with such budgets can determine conformity completely independently of the other states. EPA concluded that these states can operate independently for conformity because the Clean Air Act refers to conformity to a SIP. Each state's SIP in these cases includes inventories, control measures and programs, and budgets that apply to only that state's portion of the nonattainment or maintenance area.

States that have SIPs with adequate or approved budgets for only their own portions of a multi-state area are distinct from MPOs in a nonattainment or maintenance area that have subarea budgets within the same SIP, and also distinct from states that have SIP budgets that apply to an entire multi-state nonattainment or maintenance area. Where states have their own SIP budgets, if a conformity lapse is occurring in one state's portion of an area, the MPO(s) in the other state(s) in the nonattainment or maintenance area can continue to make conformity determinations for new or revised transportation plans and TIPs because they continue to show conformity to their SIP's budgets.

Using Figure 4 above as an example, suppose States A, B, and C each have SIPs with adequate or approved budgets that apply only to their own state's portion of the area. If State A lapses, States B and C can continue to make new conformity determinations. In contrast, as described previously:

- MPOs that have subarea budgets within one SIP are determining conformity to the same SIP, therefore when one makes a conformity determination, all other subareas must be in conformity as well in order to show conformity to the SIP; and
- multi-state areas that have budgets for the entire nonattainment or maintenance area are also determining conformity to the same SIP, therefore, there must be one regional emissions analysis for this area and conformity determinations for plans and TIPs in the area must be made at the same time as described in Q & A 8 of this part.

**Part 4: Conformity Determinations and Regional Emissions Analyses in 8-Hour Ozone Nonattainment Areas With Adequate or Approved 1-Hour SIP Budgets**

**Background**

1. Q. To what areas does this part of the guidance apply?

A. This part of the guidance clarifies the implementation of conformity in nonattainment areas for the 8-hour ozone standard that were nonattainment or maintenance areas for the 1-hour ozone standard and have adequate or approved SIP budgets that address the 1-hour ozone standard. However, this part of the guidance applies only until these areas have 8-hour budgets that they can use for conformity. Once an area submits an 8-hour SIP with budgets and EPA finds the budgets adequate or approves the 8-hour SIP that contains budgets, that area must use the 8-hour budgets for conformity according to §93.109(e)(1) of the conformity rule. At that point, Part 3 of this guidance would apply, and Part 4 would no longer be relevant to that area. In Part 4 of the guidance, the terms:

- 8-hour area means a nonattainment area for the 8-hour ozone standard, and
- 1-hour area means a nonattainment or maintenance area for the 1-hour standard.

The July 2004 final rule allows 8-hour areas with 1-hour SIPs to implement conformity in the same way as they have been under the 1-hour standard, to the extent possible. In other words, the 8-hour areas with 1-hour budgets will continue to use them wherever possible. This part of the guidance is intended to assist in understanding how that general principle applies in various circumstances.

2. Q. How is Part 4 organized?

A. Part 4 is organized under headings for background, boundary scenario, and general implementation topics, as follows:

Background (questions 1 - 8);  
Scenario 1 (questions 9 - 11);  
Scenario 2 (questions 12 - 13);  
Scenario 3 (questions 14 - 18);  
Scenario 4 (questions 19 - 22); and  
General Implementation of the Final Rule (questions 23 - 25).

3. Q. What are the ways an 8-hour area could be related to a 1-hour area that has adequate or approved 1-hour budgets?

A. As described in the July 1, 2004, conformity rule, there are four generic scenarios for how 8-hour area boundaries relate to 1-hour area boundaries, and the conformity rule is written with these four scenarios in mind.

To determine which scenario appropriately describes an area, it is necessary to consider the boundary of the entire 8-hour area. For example, in a multi-state 8-hour area, the 8-hour boundary refers to the entire multi-state area, rather than each state's individual portion. Figure 5 illustrates the four generic boundary scenarios.

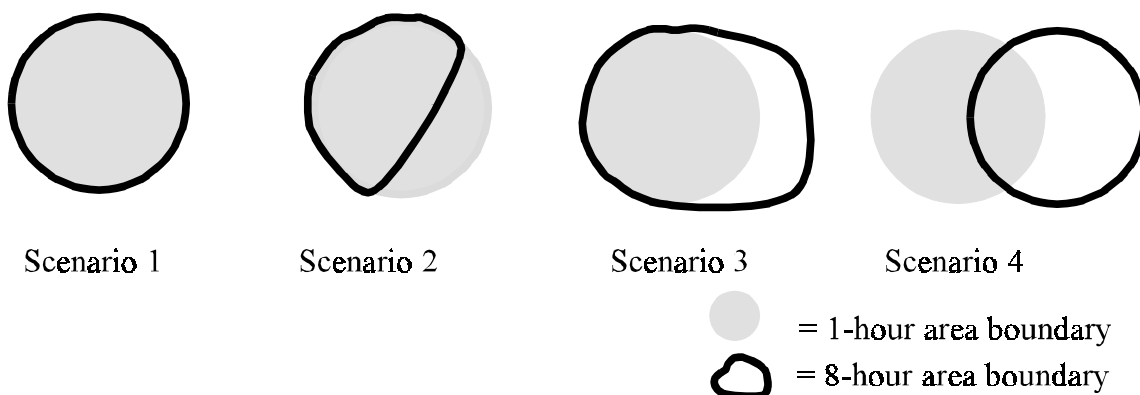


Figure 5: The Four Boundary Scenarios

- Scenario 1: the 8-hour area boundary and the 1-hour area boundary are identical.
  - Scenario 2: the 8-hour area boundary is smaller than the 1-hour area boundary.
  - Scenario 3: the 8-hour area boundary is larger than the 1-hour area boundary.
  - Scenario 4: the 8-hour area boundary partially overlaps the 1-hour area boundary.
4. Q. Do 8-hour areas with 1-hour budgets have to use the 1-hour budgets for conformity determinations under the 8-hour standard?

A. Yes, in most cases. As required in §93.109(e)(2) of the July 2004 final rule, the 1-hour budgets must be used for 8-hour conformity determinations, unless the interim emissions test(s) is more appropriate as decided through the interagency consultation process (see §93.109(e)(2)(v)). Section 176(c) of the Clean Air Act states that transportation activities must not cause new violations, increase the frequency or severity

of existing violations, or delay timely attainment. Using 1-hour budgets where available and appropriate ensures that air quality progress to date is maintained, air quality will not be worsened and attainment of the 8-hour standard will not be delayed because of emissions increases prior to the development of SIPs with 8-hour budgets. Once EPA finds a budget adequate or approves the SIP that includes it, the budget test provides the best means to determine whether transportation plans and TIPs meet Clean Air Act conformity requirements. EPA believes this principle applies with respect to the 1-hour budgets in 8-hour nonattainment areas as well: in most cases, the 1-hour budgets are the best test for determining conformity to the 8-hour standard before 8-hour budgets are available because the 1-hour budgets have led to current air quality improvements.

5. Q. Are there circumstances under which an 8-hour area with 1-hour budgets would not use them?

As described in the preamble to the July 2004 final rule (69 FR 40025), though EPA anticipates that exceptions to the use of the 1-hour budgets will be infrequent, there are some cases where using the interim emissions test(s) may be more appropriate to meet Clean Air Act requirements. EPA expects such limited cases to be supported and documented in the 8-hour conformity determination for a given area. EPA notes that an adequate or approved 1-hour SIP budget cannot be considered inappropriate simply because it is difficult to pass for 8-hour conformity purposes. In addition, as noted below and consistent with past conformity precedent, 1-hour budgets cannot be discarded simply because they are based on older planning assumptions or emissions models, unless through interagency consultation it is determined that a different emissions test(s) is more appropriate to ensure that air quality is not worsened for all 8-hour areas and that reductions are achieved in certain ozone areas.

The most likely example of when the 1-hour budgets may not be the most appropriate test is where a 1-hour budget is not currently used in conformity determinations for the 1-hour standard, and thus is currently not relied upon to measure whether transportation activities are consistent with Clean Air Act requirements. Such a case would happen when the 1-hour budget year is no longer in the timeframe of the transportation plan and there is no requirement to meet the budget test prior to the year in which the next 1-hour budget is established, (e.g., the SIP established a budget for the 1-hour attainment year, but that attainment year has passed and budgets for future years are available). For example, suppose a 1-hour maintenance area attained in 1999 and has a maintenance plan with budgets for 2009. If the area has an 8-hour attainment date of 2007, for an 8-hour conformity determination it would have to compare emissions in 2007 to the budgets from the most recent prior year, which would be the 1-hour attainment budgets for the year 1999. In this case, the budgets are not currently in use for the 1-hour standard, and it may be more appropriate for an area to use the 2002 baseline year test for the 2007 analysis year in the 8-hour conformity determination, since the 2002 baseline could be lower and

therefore more protective than the 1999 budgets. However, the maintenance area would use its 2009 budgets in the 1-hour maintenance plan to show 8-hour conformity for 2009 and all future analysis years.

However, if the budget year has passed but the budgets have continued to be used for conformity for the 1-hour standard, they would likely continue to apply for 8-hour conformity. For example, suppose a severe 1-hour nonattainment area has budgets only for its 2005 attainment year. Once the 8-hour standard applies and before the area has adequate or approved 8-hour budgets, the area would likely continue to use its 1-hour attainment budgets for all analysis years for 8-hour conformity determinations, even after the year 2005 is no longer in the timeframe of the transportation plan. Note, although the 2005 budgets would be used after 2005 is no longer in the timeframe of the plan, 2005 would no longer be a required analysis year.

Another example of when the interim emissions test(s) would be more appropriate than existing adequate or approved 1-hour budgets would be in certain Scenario 4 areas where it is impossible to determine which portion of a 1-hour budget covers an 8-hour nonattainment area. In this case, applying the budget test with 1-hour budgets is not feasible, and consequently, only the interim emissions test(s) are available for such unique areas.

As described in Section V. of the July 1, 2004, preamble (69 FR 40019 - 21), when a SIP budget is not established a moderate or above ozone area would need to pass both interim emissions tests. Areas classified as marginal or designated under Clean Air Act, Part D, subpart 1 can choose between the two tests when no budgets apply. However, in these cases where a 1-hour budget is available but the area demonstrates it is not the most appropriate test, EPA believes that the no-greater-than-2002 baseline year test would most likely be used. EPA believes it is extremely unlikely that the build/no-build test alone would ever be a more appropriate test than the budget test with existing 1-hour budgets that are currently used for conformity purposes. Please refer to the July 1, 2004, rule preamble on this point (69 FR 40025).

Areas must use the consultation process to decide whether the applicable interim emissions tests are more appropriate to meet Clean Air Act requirements than the budgets in each 1-hour SIP. As described in the first example above, there may be cases where an area has multiple 1-hour SIPs, some of which have appropriate budgets while others do not. In areas where only one interim emissions test may be selected, the rule requires that areas must also justify selection of the specific test chosen as being more appropriate for meeting Clean Air Act requirements than the available 1-hour budgets. This decision should be discussed with all interagency consultation parties and documented in the conformity determination for the 8-hour standard. (Please refer to the preamble of the July 2004 final conformity rule at 69 FR 40025 for more information.)

6. Q. In 8-hour areas with 1-hour subarea budgets, do all subareas have to use the 1-hour budgets for 8-hour conformity determinations? Likewise, in multi-state 8-hour areas where each state has separate 1-hour budgets, do all states have to use their 1-hour budgets for 8-hour conformity?

A. In general, each subarea or state can determine conformity independently as long as everyone is using 1-hour budgets to determine conformity. However, in the unlikely event that one subarea or state determines that its 1-hour budgets are inappropriate, other subareas or state budgets may also be inappropriate. See Part 3 of this guidance for further rationale for conformity determinations using subarea and multi-state SIP budgets. When any subarea or state believes that is inappropriate to use its budgets, all subareas or states would consult to determine the impact on future conformity determinations. EPA believes that where one subarea or state determines its budgets are inappropriate, it is likely that the other budgets are also inappropriate because they are collectively intended to address the same Clean Air Act purpose.

EPA notes, however, that in a Scenario 4 area, the circumstances are different and more complex. In these areas, the 8-hour area partially overlaps the 1-hour area. In a multiple MPO or multi-state Scenario 4 area, it may be the case that one or more other MPOs or states cannot use their 1-hour budgets because it is not possible to determine what portion of the budgets apply. However, other MPOs or states may still be able to use their 1-hour budgets for their portions of the 8-hour area. See below for further information on the various scenarios.

7. Q. In an 8-hour area with a 1-hour SIP that establishes subarea budgets, how should MPOs demonstrate conformity for the first time under the 8-hour standard?

A. As described in Part 3 of this guidance, when an area has subarea budgets, conformity for an MPO's plan and TIP can only be determined if all other subareas have conforming transportation plans and TIPs in place for a given pollutant and standard.

To the extent possible, EPA believes that the subarea budgets must be used in the 8-hour conformity determination, unless it is determined through consultation that they are not appropriate for meeting Clean Air Act conformity requirements. Subarea budgets in 1-hour SIPs must continue to be used under the conformity rule for the 8-hour standard, because they ensure that air quality progress to date is maintained.

In general, where an 8-hour area has multiple MPOs with subarea budgets for the 1-hour standard, EPA and DOT believe it is necessary for the first conformity determination under the 8-hour standard to be done as follows: each MPO would show its plan and TIP conform to its 1-hour subarea budgets independently. All of the MPOs' plan/TIP conformity determinations would then be submitted to DOT for its determinations. DOT

will not make its conformity determination on any of the plans or TIPs from the 8-hour area until every MPO in the area has made a conformity determination for its plan and TIP. Please note that this answer may differ for Scenario 3 and 4 areas where an additional portion of the 8-hour area is not covered by the 1-hour budgets (these Scenarios are discussed later in this part, beginning with Q & 14). All MPOs in the 8-hour area must have an initial valid conformity determination for the 8-hour standard by the end of the one-year grace period. If any do not, DOT will be unable to make any 8-hour conformity determinations for the 8-hour area, and all of the MPOs' plans and TIPs will lapse.

8. Q. How are subsequent 8-hour conformity determinations made in an 8-hour area where the 1-hour SIP establishes subarea budgets?

A. In general, once DOT has made its initial 8-hour conformity determination for the area, the MPOs will operate as usual: before any MPO in the area determines conformity using subarea budgets, 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. This answer may differ for Scenario 3 and 4 areas where an additional portion of the 8-hour area is not covered by the 1-hour budgets (discussed later in this part, beginning with Q & A 14).

### Scenario 1 Areas

9. Q. How is conformity demonstrated in Scenario 1 areas when the 1-hour SIP budgets apply to the entire 1-hour area?

A. Using 1-hour budgets for 8-hour conformity determinations is straightforward in Scenario 1 areas, because the boundaries of the 8-hour area and 1-hour area(s) are exactly the same. The MPO or MPOs must coordinate their plan/TIP conformity determinations and submit them to DOT. Once DOT receives all plan/TIP conformity determinations for the 8-hour area, DOT will make its conformity determinations at the same time. If there is more than one MPO, the planning agencies will have to work together to develop one regional emissions analysis for the entire 8-hour area under §93.109(e)(2)(i), just as they would have been doing for the 1-hour standard. Please see Part 3 of this guidance for further information regarding how a regional emissions analysis could be completed for these areas.

Note that a Scenario 1 8-hour area could be formed from one or more 1-hour areas with adequate or approved 1-hour budgets for the entire 8-hour area.



10. Q. How is conformity demonstrated in Scenario 1 areas when the 1-hour SIP includes subarea budgets?

A. As discussed in Part 3, Q & A 1, conformity follows the SIP. Therefore, conformity and the supporting regional emissions analysis is done for the geographic area that is covered by the SIP's budgets, i.e., each subarea's portion of the nonattainment area. See Part 3, Qs & As 5 - 7, and Qs & As 7 and 8 of this part for additional information.

11. Q. How is conformity demonstrated in multi-state Scenario 1 areas, where each state has its own separate 1-hour SIP budgets?

A. As discussed in Part 3, Q & A 1, conformity follows the SIP. Therefore, conformity and the supporting regional emissions analysis is done for the geographic area that is covered by the SIP's budgets, i.e., each state's portion of the nonattainment area.

Before 8-hour ozone budgets are found adequate or approved, EPA concludes that where each state has its own 1-hour budgets, each state can continue to demonstrate conformity to its SIP independently for the 8-hour ozone standard. Therefore, conformity determinations for the 8-hour standard can be made in one state of a multi-state 8-hour area even if a lapse is occurring in another state in the 8-hour area, or conformity had not yet been determined for the 8-hour ozone standard in another state in the area. This independence in a multi-state 8-hour area applies as long as all states are using 1-hour budgets to determine conformity. Please see Part 3 of this guidance for further information regarding how a regional emissions analysis could be completed for these areas.

## Scenario 2

12. Q. How is conformity demonstrated in Scenario 2 areas, when the 1-hour SIP establishes budgets that apply to the entire 1-hour area?

A. Regardless of whether the area is located entirely within one state, or is a multi-state area, the MPO or MPOs must coordinate plan/TIP conformity determinations and submit them to DOT to satisfy the conformity rules. Once DOT receives all plan/TIP conformity determinations for the 8-hour or 1-hour area (as applicable), DOT will make its conformity determinations at the same time. Please see Part 3 of this guidance for further information regarding how a regional emissions analysis could be completed for these areas.

*[answer continues next page]*

These areas can choose either of two versions of the budget test, as required by §93.109(e)(2)(ii):

- the budget test using the subset or portion of existing adequate or approved 1-hour budgets that cover the 8-hour area, where such portion can be appropriately identified (§93.109(e)(2)(ii)(A)); or
- the budget test using the existing adequate or approved 1-hour budgets for the entire 1-hour area, however in this case any additional emissions reductions needed to pass the budget test must come from within the 8-hour area (§93.109(e)(2)(ii)(B)).

The interagency consultation process should be used to determine whether budgets for the 8-hour area can reasonably be derived from the 1-hour budgets. It may be possible to create budgets for only the 8-hour area, for example if the 1-hour SIP contains estimates of emissions by county in the years for which budgets are established, and emissions from the county or counties not included in the 8-hour area can be subtracted from the 1-hour budgets.

In Figure 6 below:

Budget for 8-hour area = 1-hour budget – county or counties not in the 8-hour area

(Area in the bold line) = (emissions in the gray circle) – (emissions from the crescent shape)

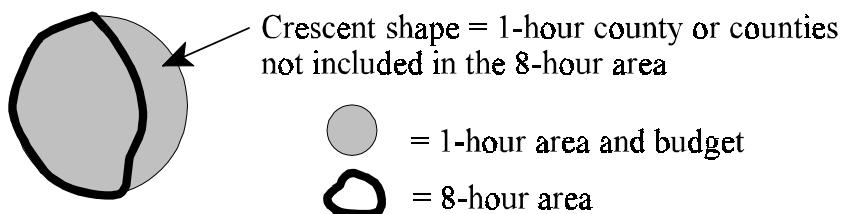


Figure 6: A Scenario 2 Area (the 8-Hour Area is Smaller Than the 1-Hour Area)

If it is not possible to create budgets that apply to only the 8-hour area, the MPO or MPOs will have to determine conformity to the 1-hour budgets for 8-hour conformity as they have for the 1-hour standard, and if reductions are needed to meet the budgets, they must come from within the 8-hour area (inside the bold line in Figure 6) as required by the conformity rule.

Note that a Scenario 2 8-hour area could be formed from one 1-hour area as in Figure 6 above, or more than one 1-hour area with adequate or approved 1-hour budgets for the 8-hour area, as depicted in Figure 7, below. In these cases, consultation should be used to determine how the 1-hour budgets will apply.

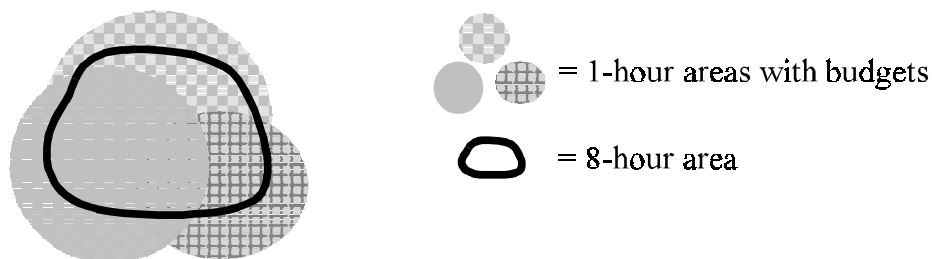


Figure 7: A Scenario 2 Area Composed of Several 1-Hour Areas

13. Q. How is conformity demonstrated in multi-state Scenario 2 areas, where each state has its own separate 1-hour SIP budgets?

A. As discussed in Part 3, Q & A 1, conformity follows the SIP. Therefore, conformity is determined for the geographic area that is covered by the SIP's budgets, i.e., each state's portion of the nonattainment area.

Before 8-hour ozone budgets are found adequate or approved, EPA concludes that where each state has its own 1-hour budgets, each state can continue to demonstrate conformity to its SIP independently for the 8-hour ozone standard. Therefore, conformity determinations for the 8-hour standard can be made in one state of a multi-state 8-hour area even if a lapse is occurring in another state of the area. This independence in a multi-state area applies as long as all states are using 1-hour budgets to determine conformity.

For these Scenario 2 8-hour areas, each state can choose either of two versions of the budget test:

- the budget test using the subset or portion of existing adequate or approved 1-hour budgets that cover the 8-hour area within its state, where applicable and when such portion can be appropriately identified (§93.109(e)(2)(ii)(A)); or
- the budget test using the existing adequate or approved 1-hour budgets for the portion of the 1-hour area within its state, however in this case any additional emissions reductions needed to pass the budget test must come from within that state's portion of the 8-hour area (§93.109(e)(2)(ii)(B)).

Scenario 3 Areas Within One State

14. Q. How is conformity demonstrated in a Scenario 3 area located entirely within one state, when the 1-hour SIP establishes budgets that apply to the entire 1-hour area?

A. In this case, the conformity rule requires that the MPO or MPOs must work together to apply the 1-hour budgets to the portion of the 8-hour area covered by them. An 8-hour area whose boundary is larger than the 1-hour area boundary includes one or more new counties that were not covered by the 1-hour standard. According to §93.109(e)(2)(iii), conformity can be determined for the 1-hour area by using the 1-hour budgets for that portion of the 8-hour area covered by them, plus the interim emissions test(s) for either:

- the remaining portion of the 8-hour area (the new county or counties), or
- the entire 8-hour area.

In Figure 8 below, the budget test must be used for the gray portion of the area, and the interim emissions test either for the white portion of the 8-hour area, or the entire 8-hour area.

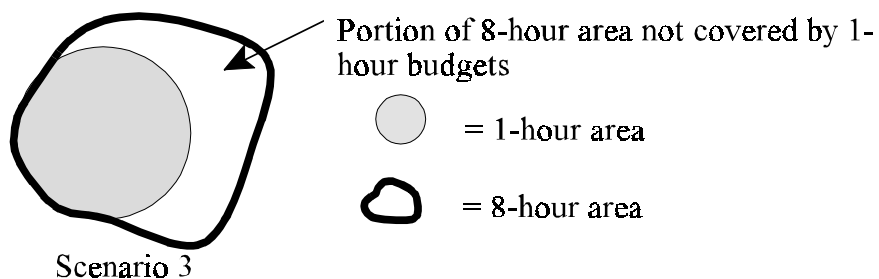


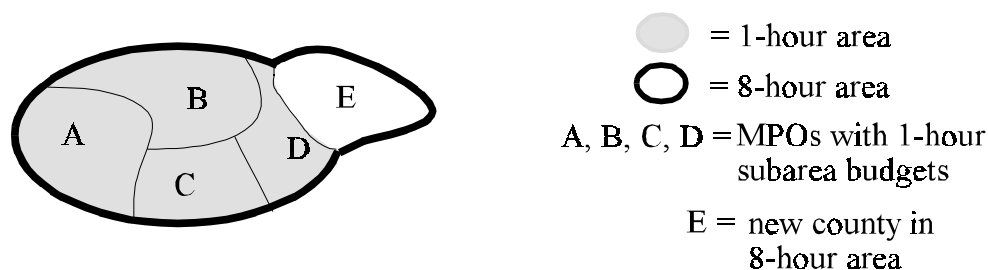
Figure 8: A Scenario 3 Area

15. Q. How is conformity demonstrated in a Scenario 3 area located entirely within one state, when the 1-hour SIP establishes subarea budgets that apply for each MPO?

A. As described in Part 3, Q& As 5 - 7, and in Q & As 6 - 8 of this part, each MPO can develop its own regional emissions analysis and conformity determination for its plan and TIP, as long as all of the other MPOs in the area have a conforming plan and TIP in place. The twist for a Scenario 3 area is that there is a portion of the 8-hour area that is not covered by 1-hour budgets. For this portion of the 8-hour area, a regional emissions analysis using the interim emissions test(s) must be done for either:

- ▶ the part of the 8-hour area not covered by 1-hour budgets, or
- ▶ the entire 8-hour area.

As addressed in Q & A 7 of this part, for the initial conformity determinations under the 8-hour standard, each MPO can determine conformity for its own plan and TIP and DOT will wait to receive a conformity determination for each MPO before making its conformity determination for the plans and TIPs in the area.



**Figure 9: A Scenario 3 Area Within One State  
With 1-Hour Subarea Budgets**

In Figure 9, above, MPOs A, B, C, and D can develop conformity determinations for just their own plans and TIPs using their 1-hour subarea budgets. The regional emissions analysis for Part E must be done using the interim emissions test(s), according to §93.109(e)(2)(iii)(B) of the conformity rule. Part E may be a donut area or may have its own MPO. If Part E is a donut area, per §93.105(c)(3) of the rule, the parties involved in interagency consultation must discuss which agency will be responsible for Part E's regional emissions analysis, and for what geographic area it will be done. DOT would wait until it had conformity determinations for all MPO plans/TIPs and the donut area before making its initial conformity determinations for the 8-hour standard.

### Scenario 3 Multi-State Areas

16. Q. How is conformity demonstrated in multi-state Scenario 3 areas, where all of the states have their own separate 1-hour SIP budgets?

A. As described above, conformity determinations can continue to be made independently in each state that has separate 1-hour budgets, as long as all states in the area use their respective 1-hour budgets for their 8-hour conformity determinations. In addition, if the 8-hour boundary in a state is larger than the 1-hour boundary in that state, the interim emissions test(s) must be met for either:

- the portion outside the 1-hour boundary and inside the 8-hour boundary in that state,
- that state's entire portion of the 8-hour nonattainment area, or
- the entire multi-state 8-hour area.<sup>7</sup>

The provision of the rule that requires the interim emissions test(s) in Scenario 3 areas, §93.109(e)(2)(iii)(B), could apply to any of these three geographic choices.

For example, in Figure 10 below, an 8-hour nonattainment area includes parts of three states. The 8-hour boundary in States A and B is unchanged from the 1-hour boundary, but the 8-hour boundary in State C is larger. States A, B, and C can continue to determine conformity independently from one another for the 8-hour standard as follows:

- States A and B would determine conformity by meeting their 1-hour budgets.
- State C would determine conformity by meeting its 1-hour budgets, plus the interim emissions test(s) either for:
  - ▶ the portion in State C not covered by the 1-hour budgets (in Figure 10, the white portion inside the bold line),
  - ▶ the entire portion of the 8-hour area in State C, or
  - ▶ the entire multi-state area (see footnote 7).

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<sup>7</sup>Though the interim emissions test(s) could be done for the entire 8-hour nonattainment area under the final rule, as explained in the preamble (69 FR 40023), “doing so may not allow each MPO in this example to develop transportation plans and TIPs and conformity determinations independently.” Please consult with EPA and DOT to discuss the implications for all states before choosing this option.

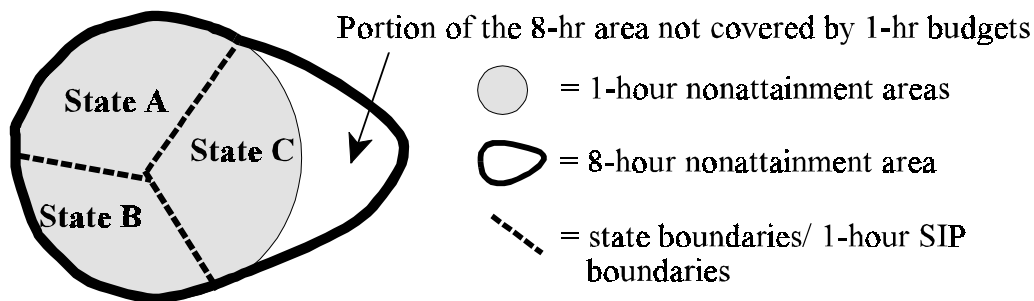


Figure 10: A Multi-State Scenario 3 Area

17. Q. How is the regional emissions analysis done in multi-state Scenario 3 areas, where only one of the states has its own 1-hour SIP budgets?

A. Consistent with Clean Air Act section 176(c), EPA interprets §93.109(e)(2)(iii) of the conformity rule to mean that a state can determine conformity completely independently, even if it is the only state in the 8-hour area that has 1-hour budgets. If one state has 1-hour budgets and the 8-hour area is a two-state area, then both states can determine conformity on their own:

- the state with the 1-hour budgets would continue to use them for 8-hour conformity;
- the state without budgets would use the interim emissions test(s).

In Figure 11 below, each state can determine conformity for its own portion of the 8-hour area, even though State B does not have 1-hour budgets.



Figure 11: A Two-State Area

However, if the 8-hour area was a three-state area and only one state had 1-hour budgets, only the state with the budgets could determine conformity on its own. The other two states would determine conformity for the 8-hour standard together using the interim emissions test(s).

Scenario 3 – General

18. Q. What are the special issues that the interagency consultation process should consider in Scenario 3 areas?

A. The interagency consultation process is of key importance in these areas. Because the 8-hour area is larger than the 1-hour area, one or more planning agencies previously not involved in conformity may become part of the interagency process. These planning agencies need to be included in the decision-making process for the area.

Through the interagency consultation process as required by §93.105 of the conformity rule, the involved parties must decide:

- whether to apply the interim emissions test(s) to the entire 8-hour area (or in a multi-state area where one or more of the states have 1-hour budgets, to one state's entire portion of the area) or just the portion not covered by the 1-hour budgets;
- whether it is more appropriate for the state DOT or an MPO to prepare the regional emissions analysis for a donut area, if there is one;
- which interim emissions test will be used, in areas permitted to select only one test; and
- analysis years for the budget test and interim emissions test(s). It may be possible to choose analysis years that satisfy both the budget and interim emissions test requirements in §§93.118(d)(2) and 93.119(g), as described below.

Scenario 4 Areas Within One State

19. Q. How is conformity done in a Scenario 4 area, when 1-hour budgets apply to the entire 1-hour area, that is, the SIP does not establish subarea budgets?

A. It may be possible to use the budgets from the 1-hour SIP, if the SIP includes emissions by county and it is possible to determine which portions of the 1-hour budgets apply to the 8-hour area. In this case, the 8-hour area would show conformity in a manner similar to a Scenario 3 area. It would use:

- the relevant portion of the 1-hour budgets for the portion of the 8-hour area where it has them, plus
- the interim emissions test(s), either for:
  - ▶ the remaining portion of the 8-hour area, or
  - ▶ the entire 8-hour area.



For example, in Figure 12 below, if it is possible to determine what portion of the 1-hour budgets apply for the portion of the 1-hour area that is now inside the 8-hour area boundary, the area would use:

- the budget test, for that portion of the 8-hour area that has them (as indicated by the arrow in Figure 12), and
- the interim emissions test(s) must be met for either:
  - ▶ the part of the 8-hour area not covered by budgets – in Figure 12, the portion shaded with the pattern, or
  - ▶ the entire 8-hour area.

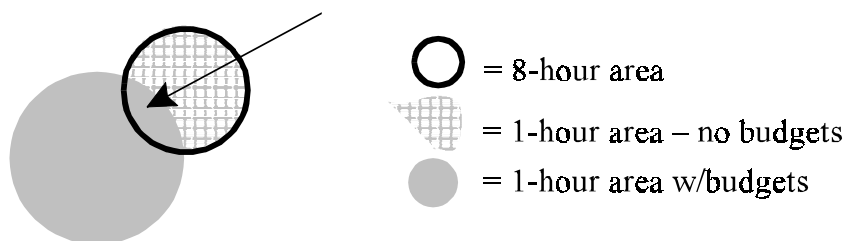


Figure 12: A Scenario 4 Area Within One State

However, it may not be possible for the 8-hour area to use the 1-hour budgets at all. This outcome would occur, for example, if 1-hour SIP does not include an emissions inventory by county. It could also occur if the 8-hour boundary includes and excludes portions of counties instead of entire counties. The interagency consultation process would be used to discuss use of 1-hour budgets in Scenario 4 areas. When such cases occur, a Scenario 4 area would determine conformity using the applicable interim emissions test(s) for the entire area.<sup>8</sup>

#### Scenario 4 Multi-State Areas

20. Q. How does a multi-state Scenario 4 area determine conformity when the 1-hour SIPs have separate budgets that apply to each state?

A. As described above, multi-state Scenario 4 areas are a unique case. Where each state has separate 1-hour budgets that apply only to its portion of the nonattainment or maintenance area, each state in a multi-state Scenario 4 area can operate entirely independently. Where a state's portion can use its 1-hour budgets, it must use them

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<sup>8</sup> This statement does not preclude agencies from developing a reasonable way to utilize the 1-hour budgets, via the interagency consultation process where possible. The final conformity rule requires the use 1-hour budgets where ever it is appropriate and possible.

according to §93.109(e)(2)(iv) of the rule. Any portion of a state's area not covered by the budgets would have to be included in an interim emissions test(s), for:

- that part not covered by 1-hour budgets,
- the state's entire portion of the 8-hour area, or
- the entire 8-hour area.

The consultation process would be used to determine which test option is selected in Scenario 4 areas.

21. Q. How is the regional emissions analysis done in a multi-state Scenario 4 area, where only one of the states has its own 1-hour SIP budgets?

A. EPA interprets §93.109(e)(2)(iv) to mean that if any state in the 8-hour area has 1-hour budgets, that state can determine conformity completely independently from the other states in the 8-hour area. The state or states that have 1-hour budgets would continue to use them or portions of them as appropriate, to the extent possible, for their 8-hour regional emissions analysis and conformity determination. The state or states without 1-hour SIP budgets would use the interim emissions test(s) for 8-hour conformity; if there is more than one state in the area without 1-hour budgets, these states would determine conformity together.

22. Q. What are special issues that the interagency consultation process should consider in Scenario 4 areas?

A. As in Scenario 3 areas, the interagency consultation process is of key importance in Scenario 4 areas. Where an 8-hour area partially overlaps a 1-hour area, one or more MPOs may no longer have to determine conformity, and one or more new MPOs may become part of the interagency process. All MPOs in the 8-hour area as well as the other parties involved in interagency consultation need to be involved in the decision-making process for the area.

Through the interagency consultation process as required by §93.105 of the conformity rule, the involved parties must decide:

- whether to apply the interim emissions test(s) to the entire area (or in a multi-state area, to one state's portion of the area) or just the portion not covered by the 1-hour budgets;
- whether it is more appropriate for the state DOT or an MPO to prepare the regional emissions analysis for a donut area, if there is one;
- which interim emissions test will be used, in areas permitted to select only one test; and

- analysis years for the budget test and interim emissions test(s). It may be possible to choose analysis years that satisfy both the budget and interim emissions test requirements in §§93.118(d) and 93.119(e) of the rule, as described below.

### General Implementation of Final Rule

#### 23. Q. What precursors must be examined in 8-hour areas with 1-hour budgets?

A. As described in the preamble to the July 1, 2004, final transportation conformity rule the regional emissions analyses for ozone areas must address the ozone precursors nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) (§93.102(b)(2)(i)). In cases where budgets are used, conformity is demonstrated with the budget test for adequate and approved NO<sub>x</sub> and VOC budgets (§93.118). In all cases where areas use the interim emissions test(s), both precursors must be analyzed unless EPA issues a NO<sub>x</sub> waiver for the 8-hour standard for an area under Clean Air Action section 182(f). These requirements are consistent with the conformity rule to date, although the July 2004 final rule moves these provisions to §93.119(f) due to reorganization of §93.119. Areas must also complete the interim emissions test(s) for NO<sub>x</sub> if the only SIP available is a reasonable further progress SIP for either the 1-hour or 8-hour standard that contains a budget for VOCs only (e.g., a 15% SIP). See §93.109(e)(3) of the final rule for further information.

#### 24. Q. How is the budget test generally implemented in 8-hour areas with 1-hour budgets?

A. The budget test requirements in §93.118 for 8-hour areas will be generally implemented in the same manner as in 1-hour areas, with a few exceptions. First, as described above, the geographic area covered by the 8-hour standard may be different than that covered by the 1-hour standard and SIP budgets in some cases. Second, the years for which regional modeling is required (i.e., analysis years) may differ.

Areas that use 1-hour budgets for their 8-hour conformity determinations will need to determine the modeling analysis years that apply for the 8-hour standard per §93.118(d). Under this section, a modeling analysis must be completed for:

- the last year of the transportation plan,
- the attainment year for the relevant pollutant and standard, and
- an intermediate year(s) such that analysis years are not more than 10 years apart.

The attainment year analysis is to be for an area's attainment year for the 8-hour standard, which probably will be different than the attainment year under the 1-hour standard. The

area must then calculate emissions in the analysis years from the planned transportation system.

Once modeling is completed per §93.118(d)(2), 8-hour areas using 1-hour SIPs will also demonstrate consistency with the 1-hour budgets according to §93.118(b), except for cases where it is determined that 1-hour budgets are not appropriate through the consultation process as described above and in §93.109(e)(2)(v) of the conformity rule. According to §93.118(b) the July 1, 2004, final rule, consistency with 1-hour budgets must be shown for:

- all 1-hour budget years that are within the timeframe of the transportation plan,
- the 8-hour attainment year,
- the last year of the plan, and
- an intermediate year(s) so that all years are not more than 10 years apart.

Emissions projected for each analysis year must be within the budgets in the 1-hour SIP from the most recent prior year. Interpolation can be used between analysis years for demonstrating consistency with budgets, just as has been done under the 1-hour standard.

For example, suppose an area designated nonattainment for the 8-hour ozone standard with an 8-hour attainment date of 2010 has the following 1-hour budgets:

- 2005 rate-of-progress (ROP) budgets for NO<sub>x</sub> and VOCs,
- 2007 ROP budgets for NO<sub>x</sub> and VOCs, and
- 2007 attainment budgets for NO<sub>x</sub> and VOCs.

By 2005, this area would determine conformity for its 2005-2025 transportation plan and its TIP, and the conformity determination would be accomplished as follows:

- 2005 budget test, using the 2005 ROP budgets;
- 2007 budget test, using both 2007 ROP and attainment budgets;
- 2010 budget test, using the 2007 attainment budgets<sup>9</sup>;
- 2020 budget test,<sup>10</sup> using the 2007 attainment budgets; and
- 2025 budget test, using the 2007 attainment budgets.

As described in §93.118(d)(2), emissions for the year 2005 could be generated with a regional emissions analysis, or could be interpolated if the area has run a regional

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<sup>9</sup>EPA has previously interpreted that only attainment budgets apply beyond the attainment year, in cases where ozone areas also have budgets for ROP SIPs.

<sup>10</sup>The year 2020 is chosen for this example, but any year from 2015 through 2019 would also be acceptable for the interim year analysis.

emissions analysis for an earlier year. Emissions for the year 2007 could also be interpolated or the area could choose to model emissions for this year. A regional modeling analysis must be done for the year 2010 (the 8-hour attainment year), any year between 2015 and 2020 for the intermediate year (in this example, 2020 is the intermediate year), and the year 2025 (the last year of the transportation plan) as required by §93.118(d)(2).

As stated above, once adequate or approved 8-hour budgets are established for a given precursor, the budget test would be completed with only the 8-hour budgets for that precursor, rather than the 1-hour budgets.

25. Q. Where 8-hour areas have to use both the budget test and the interim emissions test(s), what analysis years would be chosen?

A. As described in the July 2004 final rule, there will be cases in Scenario 3 or 4 areas where both the budget and interim emissions tests are used. Sections 93.118 and 93.119 of the conformity rule cover the criteria and procedures for the budget test and the interim emissions tests, respectively. Each of these sections define the analysis years that must be examined in the particular test.

In the budget test, the years that must be analyzed (§93.118(d)(2)) are:

- the 8-hour attainment year,
- the last year of the transportation plan, and
- an intermediate year or years as necessary, so that analysis years are no more than ten years apart.

In the interim emissions tests, the years that must be analyzed (§93.119(g)) are:

- a year no more than five years in the future (from the year in which the conformity determination is made)
- the last year of the transportation plan, and
- an intermediate year or years as necessary, so that analysis years are no more than ten years apart.

The interagency consultation process can be used to choose analysis years that meet the requirements of both §§93.118 and 93.119 so that the number of analysis years is minimized. For example, consider a Scenario 3 area in one state that is classified as moderate for the 8-hour standard that has 1-hour budgets for the years 2005 and 2007. This area needs to use both the budget and interim emissions tests to determine conformity for the 8-hour standard, because there is a portion of the area that is not covered by the 1-hour budgets. The plan covers the years 2005 through 2025 and the conformity determination will be made in the year 2005. This area could examine the following analysis years in its 8-hour conformity determination:

- 2010, which fulfills the §93.118 requirement to analyze the 8-hour attainment year, and the §93.119 requirement to analyze a year no more than five years in the future;
- 2015, which fulfills the requirement in both rule sections to analyze an intermediate year so that analysis years are no more than 10 years apart; and
- 2025, which fulfills the requirement in both rule sections to analyze the last year of the plan.

In addition, the rule requires that the portion of the area covered by the 1-hour budgets must also demonstrate consistency with the budgets for the years 2005 and 2007. Consistency can be demonstrated using interpolation for a year between two analysis years as described in §93.118(d)(2) of the conformity rule. In this example, the area could do a regional emissions analysis for 2005 and interpolate emissions for 2007 using the 2005 and 2010 analyses. Alternatively, the area could interpolate 2005 and 2007 emissions by using an analysis for a year before 2005 done for model validation purposes, if such a year is not more than 10 years earlier than 2010 (so that analysis years are no more than 10 years apart).

In this example, the budget test and interim emissions test requirements would then be satisfied as follows:

- 2005: budget test, using the 2005 budgets
- 2007: budget test, using the 2007 budgets
- 2010: budget test, using the 2007 budgets and interim emissions test(s) for 2010
- 2015: budget test, using the 2007 budgets and interim emissions test(s) for 2015<sup>11</sup>
- 2025: budget test, using the 2007 budgets and interim emissions test(s) for 2025

As described in §93.109(e)(2)(iii) of the July 1, 2004, final rule, the regional emissions analysis for the budget test in Scenario 3 would cover the 1-hour area portion of the 8-hour area (i.e., the portion covered by the 1-hour budgets). The regional analyses for the interim emissions tests in an area located within a single state would cover either the portion of the 8-hour area not covered by the 1-hour budgets, or the entire 8-hour area.

*[answer continues on the next page]*

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<sup>11</sup>The year 2015 is chosen for this example, but any year between 2016 and 2020 would also be acceptable for the interim year analysis.

The regional analyses for the interim emissions tests in a multi-state area would cover either the portion of a state's 8-hour area not covered by its 1-hour budgets, or a state's entire 8-hour area.<sup>12</sup>

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<sup>12</sup>The July 1, 2004, final rule also provides a third interim emissions test option for certain Scenario 3 multi-state areas: the regional emissions analysis could cover the entire multi-state area. Please consult EPA before choosing this option to discuss its implications.