

Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas

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

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Section 1. Background

1.1 What is the purpose of this guidance?

This document provides guidance for meeting transportation conformity requirements in areas designated nonattainment for the 2008 ozone national ambient air quality standards (“2008 ozone NAAQS”). It also addresses the revocation of the 1997 ozone NAAQS for transportation conformity purposes.

EPA’s final rule designating nonattainment areas for the 2008 ozone NAAQS was published in the *Federal Register* on May 21, 2012 and is effective July 20, 2012.¹ This rule established initial air quality designations and classifications for the 2008 ozone NAAQS for most areas in the United States, including areas of Indian country.² Details about the nonattainment designations can be found on EPA’s website at: www.epa.gov/airquality/ozonepollution/designations/2008standards/index.htm.

Concurrent with this designation rule, EPA released an additional final rule that established the approach for classifying nonattainment areas, set attainment deadlines, granted reclassification for selected nonattainment areas in California, and revoked the 1997 ozone standard for transportation conformity purposes.³ Areas designated nonattainment for the 2008 ozone NAAQS were classified into one of the following categories, based on the severity of their ozone problem: Marginal, Moderate, Serious, Severe, or Extreme. EPA has established attainment dates for the 2008 primary ozone NAAQS based on an area’s classification, as shown in the following table:⁴

Classification	Attainment Date ⁵
Marginal	December 31, 2015
Moderate	December 31, 2018
Serious	December 31, 2021
Severe	December 31, 2027
Extreme	December 31, 2032

Clean Air Act (CAA) section 176(c)(6) and the conformity regulation at 40 CFR 93.102(d) provide a one-year grace period from the effective date of designations before transportation conformity applies in areas newly designated nonattainment for a specific NAAQS. Transportation conformity for the 2008 ozone NAAQS applies one year after

¹ 77 FR 30088.

² EPA designated the Chicago-Naperville, IL-IN-WI nonattainment area in a separate final rule (77 FR 34221 (June 11, 2012)), also with an effective date of July 20, 2012.

³ 77 FR 30160 (May 21, 2012).

⁴ Source: Table 4 in 77 FR 30160.

⁵ Areas may be eligible for attainment date extensions, which is determined through the SIP process and should not be relevant for the first conformity determination under the 2008 ozone NAAQS. Please consult the appropriate EPA Regional Office for more information.

the effective date of nonattainment designations for this NAAQS (i.e., July 20, 2013). EPA will work with 2008 ozone NAAQS nonattainment areas to help them meet conformity requirements as they implement this NAAQS. We encourage early consultation to ensure any questions or issues are addressed in a timely manner. EPA contact information is provided in Section 1.3.

The guidance is part of EPA's coordinated resources for areas implementing conformity for the 2008 ozone NAAQS. In preparation for the designation and implementation of future NAAQS, EPA recently restructured the transportation conformity rule in such a manner that existing conformity requirements will apply for any new or revised NAAQS; the conformity rule, therefore, applies directly and does not need to be updated to reflect the 2008 ozone NAAQS.⁶

In addition, EPA just released its updated "Guidance for Transportation Conformity Implementation in Multi-jurisdictional Nonattainment and Maintenance Areas," (EPA420-B-12-046, July 2012, referred to hereafter as the "Multi-jurisdictional Guidance").⁷ The Multi-jurisdictional Guidance describes how conformity determinations are made on metropolitan transportation plans and transportation improvement programs (TIPs) when a nonattainment or maintenance area involves more than one MPO, more than one state, or both, and describes what conformity tests apply.

Finally, today's guidance is intended to take the information contained in the conformity rule and the Multi-jurisdictional Guidance and demonstrate how it specifically applies in the context of the 2008 ozone NAAQS. This should help agencies implementing the 2008 ozone NAAQS address the situations specific to this NAAQS most likely to be encountered. The Multi-jurisdictional Guidance and this ozone guidance are consistent with each other as both are based on the conformity regulations.

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

⁶ EPA's March 14, 2012 final rule (77 FR 14979; also known as the "Conformity Restructuring Rule") restructured the transportation conformity rule so that existing conformity requirements will apply for any new or revised NAAQS. This was done to reduce the need to amend the rule in the future merely to reference a specific NAAQS and to provide more certainty to transportation planners as conformity provisions could apply generally to any newly designated NAAQS. Therefore, the transportation conformity rule does not need to be updated specifically to include implementation of the 2008 ozone NAAQS. This guidance refers to the appropriate sections of the current rule.

⁷ The Multi-jurisdictional Guidance can be found on EPA's website at: www.epa.gov/otaq/stateresources/transconf/policy.htm.

1.2 What is transportation conformity?

Transportation conformity is required under CAA section 176(c) (42 U.S.C. 7506(c)) to ensure that federally funded or approved highway and transit activities are consistent with (“conform to”) the purpose of the state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or any interim milestones. EPA’s transportation conformity rule (40 CFR Parts 51 and 93) establishes the criteria and procedures for determining whether metropolitan transportation plans, TIPS, and federally supported highway and transit projects conform to the SIP. Transportation conformity applies to designated nonattainment and maintenance areas⁸ for transportation-related criteria pollutants: ozone, PM_{2.5}, PM₁₀, carbon monoxide, and nitrogen dioxide.

1.3 Who can I contact for more information?

For questions concerning a particular 2008 ozone nonattainment area, please contact the transportation conformity staff person responsible for this area at the appropriate EPA Regional Office. Contact information for EPA Regional Offices can be found on EPA’s website at: www.epa.gov/otaq/stateresources/transconf/contacts.htm

General questions about this guidance can be directed to EPA’s Office of Transportation and Air Quality: David Bizot, bizot.david@epa.gov, (734) 214-4432. or Astrid Larsen, larsen.astrid@epa.gov, (734) 214-4812.

Additional information regarding the transportation conformity rule and associated guidance can be found on EPA’s website at: www.epa.gov/otaq/stateresources/transconf/index.htm

Additional information about the 2008 ozone nonattainment designations can be found on EPA’s website at: www.epa.gov/airquality/ozonepollution/designations/2008standards/index.htm

1.4 Does this guidance create any new requirements?

No, this guidance is based on CAA requirements and existing associated regulations and does not create any new requirements. This guidance explains how to implement current transportation conformity requirements in areas that have been designated nonattainment for the 2008 ozone NAAQS.

⁸ “Maintenance areas” are those areas that were initially designated nonattainment for a criteria pollutant and subsequently redesignated to attainment after 1990. Maintenance areas have SIPs developed under CAA section 175A.

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

Section 2. Implementation of the 2008 Ozone NAAQS and Revocation of the 1997 Ozone NAAQS

2.1 When will conformity apply for the 2008 ozone NAAQS?

As noted in Section 1.1, CAA section 176(c)(6) and 40 CFR 93.102(d) provide a one-year grace period from the effective date of designations before transportation conformity applies in areas newly designated nonattainment for a specific NAAQS. Therefore, transportation conformity for the 2008 ozone NAAQS does not apply until one year after the effective date of nonattainment designations for this NAAQS. As EPA's final rule designating areas for the 2008 ozone NAAQS is effective July 20, 2012, conformity for this NAAQS applies beginning on July 20, 2013.

Section 2.3 provides further details for how the one-year grace period applies in newly designated nonattainment areas for the 2008 ozone NAAQS in: 1) areas with an MPO, and 2) isolated rural areas.

2.2 When will conformity stop applying for the 1997 ozone NAAQS?

EPA's final rule implementing the 2008 ozone NAAQS also revoked the 1997 ozone NAAQS for transportation conformity purposes. This revocation is effective one year after the effective date of designations for the 2008 ozone NAAQS (that is, July 20, 2013).⁹ Therefore, transportation conformity for the 1997 ozone NAAQS stops applying on that date. This revocation date also corresponds with the end of the one-year conformity grace period for the 2008 ozone NAAQS.

As explained in the May 2012 classification/revocation rule, this action was taken to bring certainty to the transportation planning process in ozone nonattainment and maintenance areas. No backsliding will result from the revocation for purposes of transportation conformity, as areas designated nonattainment for the 2008 ozone NAAQS will be required to use any existing adequate or approved SIP motor vehicle emissions budgets ("budgets") for a prior ozone NAAQS when determining conformity for the 2008 ozone NAAQS until budgets for the 2008 ozone NAAQS are either found adequate or are approved. Section 3 of this guidance covers how conformity for the 2008 ozone NAAQS is to be implemented in areas with budgets for a previous ozone NAAQS.

For 1997 ozone nonattainment or maintenance areas that are not designated nonattainment for the 2008 ozone NAAQS, transportation conformity for the 1997 ozone NAAQS ceases to apply on July 20, 2013; in such areas, no further conformity determinations for the 1997 ozone NAAQS or any other ozone NAAQS are required on or after that date.

⁹ See 77 FR 30160 (May 21, 2012).

2.3 What should be considered when making initial 2008 ozone conformity determinations?

Nonattainment Areas with One or More MPO

A metropolitan planning organization (MPO)¹⁰ and DOT must make a conformity determination with regard to the 2008 ozone NAAQS for the metropolitan transportation plan and TIP within one year after the effective date of the initial nonattainment designation for this NAAQS. The MPO and DOT can make such a conformity determination anytime during the one-year grace period, as long as the determination is completed by July 20, 2013. However, if the MPO and DOT miss the deadline, the nonattainment area would enter a conformity “lapse.” See Section 2.4 for more information on lapses.

MPOs must continue to meet conformity requirements for any other applicable NAAQS, including the 1997 ozone NAAQS, if the area is designated nonattainment or maintenance for such other NAAQS.¹¹ Determining conformity for these other NAAQS during the one-year grace period is not necessary unless required by 40 CFR 93.104 (for example, a new or amended transportation plan and/or TIP are to be adopted). The procedures for the interagency consultation process found in 40 CFR 93.105 or a state’s approved conformity SIP must be used in making conformity determinations for transportation plans and TIPs. See Section 3 for more information on interagency consultation.

Conformity determinations done by an MPO (or MPOs) must also include any donut areas¹² within the 2008 ozone NAAQS area (40 CFR 93.122(a)(1)). Each newly designated nonattainment area that includes a donut portion must use the interagency process to determine how best to include donut area emissions in the MPO’s regional emissions analysis and transportation plan and TIP conformity determination (40 CFR 93.105(c)(3) or the state’s conformity SIP). For more discussion on how conformity determinations should be made for donut areas, see the preamble to the July 1, 2004 conformity rule (69 FR 40013) and EPA’s Multi-jurisdictional Guidance.

Isolated Rural Nonattainment and Maintenance Areas

In isolated rural areas,¹³ as in other newly designated nonattainment areas, the one-year conformity grace period for the 2008 ozone NAAQS will begin on the effective date of an isolated rural area’s initial nonattainment designation. However, because these areas

¹⁰ See 40 CFR 93.101 for the definition of an MPO.

¹¹ Please note that conformity requirements for the 1997 ozone NAAQS cease to apply on July 20, 2013, when the 1997 ozone NAAQS is revoked for transportation conformity purposes.

¹² A donut area is defined in 40 CFR 93.101 as a geographic area outside a metropolitan planning area boundary, but inside a designated nonattainment or maintenance area boundary that includes an MPO.

¹³ Isolated rural nonattainment and maintenance areas are defined in 40 CFR 93.101 as areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations.

do not have federally required metropolitan transportation plans and TIPs, they are not subject to the frequency requirements for conformity determinations on transportation plans and TIPs (40 CFR 93.104(b), (c), and (e)). Therefore, such areas are not required to complete a conformity determination by the end of the one-year grace period. Instead, in an isolated rural area, a conformity determination is required for the 2008 ozone and other applicable NAAQS only when a non-exempt FHWA/FTA project(s) needs funding or approval, based on the conformity requirements for isolated rural areas at 40 CFR 93.109(g).

2.4 What happens if a 2008 ozone nonattainment area misses the one-year conformity deadline?

If, at the conclusion of the one-year grace period for newly designated areas, the MPO and DOT have not made a transportation plan and TIP conformity determination for the 2008 ozone NAAQS, the area would be in a conformity lapse. During a conformity lapse, only certain projects can receive additional federal funding or approvals to proceed (i.e., exempt projects, project phases that were approved before the lapse, and transportation control measures (TCMs) in approved SIPs). The practical impact of a conformity lapse will vary on an area-by-area basis. The lapse grace period found in 40 CFR 93.104(b)(3) and (c)(3) does not apply for newly designated nonattainment areas at the end of the one-year conformity grace period.¹⁴

2.5 Does conformity apply in tribal areas that have been designated nonattainment?

Yes. Transportation conformity applies in tribal areas that have been designated nonattainment for the 2008 ozone NAAQS. EPA recommends that the tribe(s), MPO(s), state department of transportation, DOT, and appropriate EPA Regional Office consult to determine how to most efficiently conduct conformity determinations for these areas.

Some tribal areas (Indian country) were included in areas designated nonattainment for the 2008 ozone NAAQS. In most cases, these areas are designated nonattainment as part of a surrounding area, in which case the tribe was listed by name in 40 CFR Part 81 (in the table for the 2008 ozone NAAQS) at the time designations were made.¹⁵ However, a few tribal areas were designated as separate nonattainment areas for the 2008 ozone NAAQS. In these cases, the separately designated nonattainment area was specified in 40 CFR Part 81 along with its associated classification status.

¹⁴ See 73 FR 4423-4424 (January 24, 2008) and the Multi-jurisdictional Guidance for additional details about the lapse grace period.

¹⁵ See 77 FR 30088 for the changes made to 40 Part 81 to reflect designations for the 2008 ozone NAAQS.

Section 3. Completing Conformity Determinations for the 2008 Ozone NAAQS

The conformity rule provides several tests for determining whether transportation plans, TIPs, and projects not from a conforming plan or TIP conform, and describes which test or tests are required in specific circumstances (40 CFR 93.109). The budget test (40 CFR 93.118) is used when an area has either adequate or approved budgets for a pollutant in a SIP. Therefore, when a 2008 ozone NAAQS area has adequate or approved budgets for any ozone NAAQS, the budget test requirements in 40 CFR 93.118 must be met. When a 2008 ozone NAAQS area does not have adequate or approved budgets for any ozone NAAQS, the interim emissions test(s) must be used (40 CFR 93.119). There are also some cases, prior to 2008 ozone SIP budgets being available, where both the budget test and interim emissions test(s) are required. How these tests are applied is described in more detail in this section.

Note that, once 2008 ozone SIP budgets are found adequate or approved, areas must use the budget test with those budgets to determine 2008 ozone conformity (40 CFR 93.109(c)(1)). This section focuses on how 2008 ozone areas determine conformity before such 2008 ozone budgets are available (40 CFR 93.109(c)(2) and (3)).

3.1 Overview of requirements of a conformity determination for a transportation plan and TIP for the 2008 ozone NAAQS

For all areas where transportation conformity applies, including the 2008 ozone areas, Table 1 found in 40 CFR 93.109(b) lists the conformity criteria that apply for transportation plans, TIPs, and projects in 40 CFR 93.110 through 93.119.

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

- Use latest planning assumptions (40 CFR 93.110);
- Use the latest emissions model (40 CFR 93.111);¹⁶
- Pass the appropriate conformity test – the budget test and/or the interim emissions test(s) (40 CFR 93.118 and 93.119).

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

- Interagency consultation and public participation (40 CFR 93.112);
- Timely implementation of TCMs in approved SIPs (40 CFR 93.113).

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

¹⁶ See Section 4 for more information about which emissions model should be used for regional conformity analyses for the 2008 ozone NAAQS.

3.2 *Conformity tests for the first conformity determination for the 2008 ozone NAAQS*

It is not expected that SIP budgets for the 2008 ozone NAAQS will be available in time for the first conformity determination. Most if not all 2008 ozone areas will have to rely on the conformity tests in 40 CFR 93.109(c)(2) and (3).

If 1997 ozone budgets are available for each analysis year in a conformity determination for the 2008 ozone NAAQS, an area would:

- Use 1997 ozone budgets that are established for that year or the most recent prior year (see Sections 3.3 and 3.4).¹⁷

If no 1997 ozone budgets are available for an analysis year:

- Use 1-hour ozone budgets that are established for that year or the most recent prior year (see Sections 3.3 and 3.4).

If no ozone budgets are available for an analysis year at all:

- Use the interim emissions test or tests, according to the 2008 ozone area's classification (see Sections 3.5 through 3.7).

There may be limited cases where both a budget for a previous ozone NAAQS and the interim emissions test(s) apply (i.e., Scenario 3 and 4 areas, as described in Section 3.3 and Section 3.8).

In addition, the interagency consultation process described in 40 CFR 93.105 must be used to determine how conformity applies in a specific area. Additional decisions will need to be made through interagency consultation if the area covers multiple jurisdictions, for example, if the area includes portions of more than one state, or is covered by more than one MPO.

EPA will work with DOT and state and local transportation and air quality agencies to determine which conformity test(s) applies in each 2008 ozone area for the first determination. See Section 1.3 for EPA contact information.

¹⁷ When using the budget test, consistency with budgets must be demonstrated for each year for which there are adequate or approved ozone budget(s) (40 CFR 93.118(b)) and for analysis years (40 CFR 93.118(d)(2)). In each of these years, emissions must be less than or equal to the budget(s) established for that year (40 CFR 93.118(b)(1)(i)); when no budget(s) have been established for that year, then emissions must be less than or equal to budget(s) established for the most recent prior year (40 CFR 93.118(b)(1)(ii)). A budget cannot be used for an analysis year if it is established for a year later than the analysis year.

3.3 *Using budgets from a previous ozone NAAQS for 2008 ozone conformity*

In general, if an area does not have budgets for the 2008 ozone NAAQS, but has budgets for a previous ozone NAAQS (i.e., the 1997 ozone NAAQS or 1-hour ozone NAAQS), these budgets must be used in the budget test. Where such budgets do not cover the entire area, the interim emissions test(s) may also have to be used (40 CFR 93.109(c)(2)(iii) and (iv)).

A 2006 court decision established the legal parameters for using existing budgets as the regional conformity test (*Environmental Defense v. EPA*, 467 F.3d 1329 (DC Cir. 2006)). EPA incorporated the court's decision for ozone conformity tests in its January 24, 2008 final rule (73 FR 4424). While the court's decision concerned the 1997 ozone NAAQS, EPA believes the court's holding is relevant for other pollutants and NAAQS for which conformity must be demonstrated. Therefore, EPA incorporated the court's decision regarding conformity tests in its March 24, 2010 final rule (the "PM Amendments" rule, 75 FR 14260). Most recently, in its "Conformity Restructuring Rule" (77 FR 14979), EPA reorganized 40 CFR 93.109(c) so that the court's decision is incorporated in the regulation for all NAAQS for which conformity applies.

As described in the Conformity Restructuring Rule, there are four generic scenarios for how an area's boundaries for the relevant NAAQS relate to boundaries covered by budgets for another NAAQS of the same pollutant. For purposes of the 2008 ozone NAAQS areas that have budgets from a previous ozone NAAQS, the four scenarios are:

- Scenario 1: Boundaries for both the 2008 ozone NAAQS and previous ozone NAAQS areas are identical.
- Scenario 2: The boundary of the 2008 ozone area is smaller than and completely within the area designated for the previous ozone NAAQS.
- Scenario 3: The boundary of the 2008 ozone area is larger than and contains the area designated for the previous ozone NAAQS.
- Scenario 4: The boundary of the 2008 ozone area overlaps with a portion of the area designated for the previous ozone NAAQS.

Many areas designated nonattainment for the 2008 ozone NAAQS will be "Scenario 1" areas (that is, will have identical boundaries for both the 2008 ozone NAAQS and a previous ozone NAAQS). Consistent with the CAA as interpreted in the court decision described above, these areas must demonstrate conformity by meeting the budget test for the 2008 ozone NAAQS using existing adequate or approved SIP budgets for the previous ozone NAAQS until adequate or approved budgets for the 2008 ozone NAAQS are effective (40 CFR 93.109(c)(2)(i)).

There are also a number of "Scenario 2" areas, where areas have budgets for a previous ozone NAAQS that cover an area larger than that designated for the 2008 ozone NAAQS.

In these cases, the interagency consultation process should be used to determine how to apply the budget test in those areas (40 CFR 93.109(c)(2)(ii)).

There are a few “Scenario 3” areas, where the 2008 ozone area is larger than the geographic area covered by the 1997 ozone budgets. In these areas, the interagency consultation process should be used to determine how to apply the budget test and interim emissions test(s).¹⁸ Refer to the conformity regulation for more information on the interim emissions tests.

There are also a few “Scenario 4” areas where the 2008 ozone areas overlaps with a portion of the area designated for the previous ozone NAAQS. In these areas, the interagency consultation process should be used to determine how to apply the budgets tests (40 CFR 93.109(c)(2)(iv)).

For all areas, given that there are several factors to consider, such as what previous ozone budgets are available, the geographic area they cover, and the years in which they are established, the interagency consultation process should be used to determine what test or tests will be used for an analysis year and how it should be applied to the area. In addition, Section 3.9 gives some examples of how the various tests might be applied in certain 2008 ozone situations.

For areas where subarea budgets for a previous ozone NAAQS are established, or where budgets for a previous ozone NAAQS are established for individual states in a multi-state area, EPA’s Multi-jurisdictional Guidance also provides guidance on how conformity is done. Refer to Section 3.4, below, for more information.

3.4 Multi-jurisdictional 2008 ozone areas that have budgets for a previous ozone NAAQS

For 2008 ozone areas that have budgets for a previous ozone NAAQS but also include more than one MPO, an MPO and a donut area, and/or more than one state, Section 4 of the Multi-jurisdictional Guidance provides detailed guidance for preparing conformity determinations. The most relevant information from the Multi-jurisdictional Guidance has been adapted and included here for the 2008 ozone NAAQS, but please refer to the Multi-jurisdictional Guidance for further information regarding how a regional emissions analysis could be completed for these areas.

One budget covers more than one MPO. Where budgets for a previous ozone NAAQS cover more than one MPO, the planning agencies will need to work together to develop one regional emissions analysis for the entire 2008 ozone area, as they have done for the previous ozone NAAQS (40 CFR 93.124(d)). MPOs must coordinate their transportation plan/TIP conformity determinations and submit them to DOT. Once DOT receives all

¹⁸ For these areas, EPA notes that the regulation at 93.109(c)(2)(iii) provides a choice between meeting the budget test for the portion of the area that it covers plus the interim emissions test(s), or the budget test for the entire nonattainment area.

plan/TIP conformity determinations for the 2008 ozone area, DOT will make its conformity determinations at the same time. All MPOs within the area must have a conformity determination for the 2008 ozone NAAQS by the end of the one-year grace period under 40 CFR 93.102(d). If any do not, DOT will be unable to make any conformity determinations for the MPOs within the 2008 ozone area and all of the MPOs' transportation plans and TIPs will lapse.

Subarea budgets. Where subarea budgets¹⁹ exist for a previous ozone NAAQS, these subarea budgets must also be used in the 2008 ozone conformity determinations (40 CFR 93.109(c)(2) and 93.124(d)). Using the existing budgets will ensure that air quality progress to date is maintained. In general, EPA and DOT believe it is necessary for the first conformity determination under the 2008 ozone NAAQS to be performed as follows: each MPO would demonstrate conformity of its transportation plan and TIP to the 2008 ozone NAAQS using the subarea budgets for the previous ozone NAAQS. All of the MPOs' transportation plan/TIP conformity determinations would then be submitted to DOT. DOT will not make its conformity determination on any of the transportation plans or TIPs for the 2008 ozone NAAQS until every MPO in the area has made a conformity determination for its transportation plan and TIP. All MPOs within the area must have a conformity determination for the 2008 ozone NAAQS by the end of the one-year grace period under 40 CFR 93.102(d). If any do not, DOT will be unable to make any conformity determinations for the MPOs within the 2008 ozone area, and all of the MPOs' transportation plans and TIPs will lapse.²⁰

Multi-state areas. For multi-state 2008 ozone nonattainment areas, using budgets from a previous ozone NAAQS (40 CFR 93.109(c)(2)) preserves the ability for MPOs to determine conformity independently from one another. In other words, MPOs can operate independently for conformity to the 2008 ozone NAAQS if they have adequate or approved budgets for a previous ozone NAAQS for their state's portion of the nonattainment area. Specifically, conformity determinations for the 2008 ozone NAAQS (including the initial conformity determination) can be made in one state of a multi-state 2008 ozone area if there are adequate or approved budgets for a previous ozone NAAQS for that state. This is true even if conformity had not yet been determined for the 2008 ozone NAAQS in another state in the area, or if a lapse occurs in another state in the 2008 ozone area.

¹⁹ Areas may have subarea budgets when there is more than one MPO in a nonattainment area (within one state) per 40 CFR 93.124(d); in this case, each MPO must meet its own subarea budgets. See Part 4 of the Multi-jurisdictional Guidance for more information.

²⁰ In general, for subsequent conformity determinations, the individual MPOs can make conformity determinations independently as long as all other MPOs in the area have a conforming transportation 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.

3.5 *Using an interim emissions test to determine 2008 ozone conformity*

As mentioned in Sections 3.2 and 3.3, some 2008 ozone areas will need to use one or both of the interim emissions tests(40 CFR 93.119(b)). For example, the interim emissions test(s) must be used if an area does not have adequate or approved budgets for any ozone NAAQS that it can use for an analysis year. This is expected to be the case for all analysis years of the conformity determination in ozone areas that are “brand new” to ozone conformity (that is, have not previously been designated nonattainment for any previous ozone NAAQS (40 CFR 93.109(c)(3))). The interim emissions test(s) may also be required in areas with existing ozone budgets that do not cover the entire 2008 ozone area (Scenario 3 areas, 40 CFR 93.109(c)(2)(iii)). The interim emissions tests include different versions of the build/no-build test and baseline year test.

When 2008 ozone nonattainment areas must use the interim emissions test(s) for conformity determinations conducted before adequate or approved 2008 ozone SIP budgets are established (40 CFR 93.119):

Areas classified Moderate and above for the 2008 ozone NAAQS must conduct *both* of these tests:

- The build-less-than-no-build test (40 CFR 93.119(b)(1)(i)). In this test, the transportation emissions reflecting the proposed transportation plan or TIP in the analysis year (the “build” or “action scenario”) must be *less than* the emissions from the transportation system that would result in that same analysis year from current programs only (the “no-build” or “baseline scenario”) (40 CFR 93.119(h)); and
- The less-than-baseline year emissions test (40 CFR 93.119(b)(1)(ii)). In this test, the transportation emissions reflecting the proposed transportation plan or TIP in the analysis year (the “build” or “action scenario”) must be *lower than* the emissions level of motor vehicle emissions in the baseline year by any nonzero amount. The baseline year for 2008 ozone conformity is 2011. Refer to Section 3.7 for more on the baseline year test.

Areas classified Marginal for the 2008 ozone NAAQS must choose to conduct *one* of these tests:²¹

- The build-no-greater-than-no-build test (40 CFR 93.119(b)(2)(i)). In this test, the transportation emissions reflecting the proposed transportation plan or TIP in the analysis year (the “build” or “action scenario”) must *not be greater than* the emissions from the transportation system that would result in that same analysis

²¹ This would also include any 2008 ozone NAAQS areas classified less than Marginal, of which none are at this time.

year from current programs only (the “no-build” or “baseline scenario”) (40 CFR 93.119(h)); or

- The no-greater-than-baseline year emissions test (40 CFR 93.119(b)(2)(ii)). In this test, the transportation emissions reflecting the proposed transportation plan or TIP in the analysis year (the “build” or “action scenario”) must *not be greater than* the level of motor vehicle emissions in the baseline year. Refer to Section 3.7 for more on the baseline year test.

Where 2008 ozone areas that must use the interim emissions test(s) contain more than one MPO and/or a donut portion, there are additional considerations. Refer to Section 3.6 for additional information about applying interim emissions tests in multi-jurisdictional areas.

3.6 Multi-jurisdictional 2008 ozone areas using interim emissions tests

Any multi-jurisdictional area using one or both of the interim emissions tests will want to refer to Part 2 of the Multi-jurisdictional Guidance, which covers conformity determinations and regional emissions analyses before SIP budgets are adequate or approved, and specifically addresses the following topics:

- The geographic area to be examined in a regional emissions analysis and conformity determination before the area has adequate or approved budgets (Section 2.3 of Multi-jurisdictional Guidance);
- How multi-jurisdictional areas can create a regional emissions analysis for the entire nonattainment area (Section 2.4 of Multi-jurisdictional Guidance);
- The decisions to be made in the interagency consultation process (Section 2.5 of the Multi-jurisdictional Guidance); and
- What occurs when one MPO can meet the requirements in 40 CFR 93.119 when another MPO or donut area cannot (Section 2.6 of the Multi-jurisdictional Guidance).

3.7 Baseline year for the baseline year test

For any NAAQS promulgated after 1997, the conformity rule at 40 CFR 93.119(e)(4) defines the baseline year for the baseline year test as the most recent year for which EPA’s Air Emissions Reporting Rule requires submission of on-road mobile source emissions inventories as of the effective date of designations.²² For the 2008 ozone NAAQS, this year is 2011. Conformity determinations using the baseline year test as an interim emissions test must therefore use 2011 as the baseline year. See www.epa.gov/otaq/stateresources/transconf/baseline.htm for more information on baseline years.

²² This change was made in the final Conformity Restructuring Rule (77 FR 14979).

Note that the baseline year emissions need to be modeled rather than interpolated, based on the latest planning assumptions, latest emissions model and appropriate methods for estimating travel and speeds as required by 40 CFR 93.110, 93.111, and 93.122. See Section 4.1 for more information about emissions models to be used when implementing the 2008 ozone NAAQS.

3.8 Analysis years for 2008 ozone conformity

The years required to be analyzed for 2008 ozone conformity depends on what test(s) are being used to demonstrate conformity for a particular area.

When using the budget test

When using the budget test for the 2008 ozone NAAQS, 40 CFR 93.122(d)(2) requires the regional emissions analysis to be performed for:

- The attainment year for the 2008 ozone NAAQS, if it is within the timeframe of the transportation plan and conformity determination,
- The last year of the timeframe of the conformity determination, and
- Intermediate years as necessary, such that analysis years are no more than ten years apart.

Note that the analysis years chosen must meet 40 CFR 93.118(d)(2) for all NAAQS that apply. During the one-year grace period for newly designated 2008 ozone areas when the 1997 ozone NAAQS also applies, the 2008 ozone areas with adequate or approved 1997 ozone budgets can determine conformity for both of these NAAQS at the same time. See Section 1.1 for the attainment years for the 2008 ozone NAAQS.

In addition, in areas that have budgets for a previous ozone NAAQS that are established for years in the timeframe of the conformity determination, consistency with those budgets must also be determined (40 CFR 93.118(b)). This consistency can be demonstrated by interpolating between the years for which regional emissions analyses are performed (40 CFR 93.118(d)(2)).²³

When using an interim emissions test

Regardless of whether the area is required to use the baseline year test and/or the build/no-build test, the required analysis years when using an interim emissions test, based on 40 CFR 93.119(g)(1), are:

- A year no more than 5 years beyond the year in which the conformity determination is being made;
- The last year of the timeframe of the conformity determination, and
- Intermediate years as necessary, such that analysis years are not more than ten years apart.

²³ Interpolating emissions for a particular year is only possible when an analysis has been done for a year earlier and a year later than that year.

When using a combination of both the budget test and an interim emissions test(s)

In cases when both the budget test and an interim emissions test(s) are used to demonstrate conformity to the 2008 ozone NAAQS, the interagency consultation process must be used to determine which analysis years should be selected for regional emissions analyses. This situation may occur either because budgets are not available for some analysis years²⁴ or because budgets do not cover the entire 2008 ozone area. The area may choose analysis years that satisfy both the budget and interim emissions test requirements (40 CFR 93.118(d)(2) and 93.119(g)(1)).

The EPA Regional Office is available to discuss what analysis years apply in different situations. See EPA contact information in Section 1.2.

3.9 Examples for 2008 ozone conformity determinations

Below are several hypothetical examples of how an area would apply the conformity tests given different scenarios, budgets, and analysis years. These examples are presumed to occur before the effective date of revocation for the 1997 ozone NAAQS, and in Examples 1 and 2, these hypothetical areas have chosen to determine conformity for both the 1997 and 2008 ozone NAAQS at the same time. The examples also note how the analysis would change after the 1997 ozone NAAQS is revoked.

Example 1

A 1997 ozone nonattainment area is designated nonattainment for the 2008 ozone NAAQS and is a Scenario 1 area (i.e., the boundaries of the 1997 ozone NAAQS and 2008 ozone NAAQS areas are identical). The area has 1997 ozone budgets for years 2012, 2017, and 2018. The area is classified Marginal for the 2008 ozone NAAQS with an attainment year of 2015.

In March 2013, the MPO is making a conformity determination for both the 1997 and 2008 ozone NAAQS for its transportation plan and TIP. The transportation plan runs through 2035. In addition to needing to analyze 2015 and 2018 (its attainment years for the 2008 and 1997 ozone NAAQS, respectively) and 2035 (the last year of the timeframe of the conformity determination), the area decides to analyze 2025 (an intermediate year so that analysis years are no more than 10 years apart).

²⁴ There can be limited cases where an area has a budget for another NAAQS of the same pollutant that cannot be used for all analysis years because it is established for a later year. When this occurs, the interim emissions test(s) would be used for analysis years that are earlier than the budget year. For example, suppose there is a 2008 ozone area that is a Scenario 1 area. This area has 1997 ozone NAAQS maintenance budgets for the year 2022, and that is the only year for which ozone budgets exist. In this case, the 2008 ozone area must use the budget test according to 40 CFR 93.118 for 2022 and later years, and the interim emissions test(s) according to 40 CFR 93.119 for analysis years earlier than 2022.

This table summarizes how the conformity tests would be done for this example:

Year	Analysis Required? (40 CFR 93.118(d)(2))	Test Used
2015	Yes – attainment year for 2008 ozone NAAQS	1997 ozone budgets for 2012
2017	No – only “demonstrate consistency” required, so emissions can be interpolated	1997 ozone budgets for 2017
2018	Yes – attainment year for 1997 ozone NAAQS	1997 ozone budgets for 2018
2025	Yes – intermediate year	1997 ozone budgets for 2018
2035	Yes – last year of the transportation plan	1997 ozone budgets for 2018

As previously noted, this table assumes this conformity determination will be completed prior to the effective date of revocation for the 1997 ozone NAAQS (before July 20, 2013). After that date, there would be no need to analyze 2018 (this area’s attainment year for the 1997 ozone NAAQS) because conformity for the 1997 ozone NAAQS will no longer apply. Instead, consistency with the 1997 ozone NAAQS budgets for the 2018 budget year could be determined through interpolation. The remainder of the table would remain unchanged.

Example 2

An area is designated nonattainment for the 1997 and 2008 ozone NAAQS and was previously a maintenance area for the 1-hour NAAQS. It is a Scenario 1 area with regard to both previous ozone NAAQS (e.g., the boundaries of the 1-hour, 1997 and 2008 ozone NAAQS areas are all identical). The area has adequate 1-hour ozone budgets for 2012 and 1997 ozone maintenance plan budgets for 2022. The area is classified Marginal for the 2008 ozone NAAQS with a 2015 attainment year. The area’s 1997 ozone NAAQS attainment year is no longer in the timeframe of the transportation plan.

It is March 2013 and this area is making its 1997 and 2008 ozone conformity determinations for its transportation plan and TIP. The transportation plan ends in 2040. In addition to needing to analyze 2015 (its 2008 ozone NAAQS attainment year) and 2040 (the last year of timeframe of conformity determination), the area decides to analyze 2020 and 2030 (intermediate years so that analysis years are no more than 10 years apart).

This table summarizes how the conformity tests would be done for this example:

Year	Analysis Required? (40 CFR 93.118(d)(2))	Test Used
2015	Yes – attainment year for 2008 ozone NAAQS	1-hour ozone budgets for 2012
2020	Yes – intermediate year	1-hour ozone budgets for 2012
2022	No – only “demonstrate consistency” required, so emissions can be interpolated	1997 ozone budgets for 2022
2030	Yes – intermediate year	1997 ozone budgets for 2022
2040	Yes – last year of the transportation plan	1997 ozone budgets for 2022

Note that, while in this example the area chose to analyze 2020 as an intermediate year, it could have selected a different year and still met the requirement that analysis years be no more than ten years apart. It could have, for example, selected 2022 as an intermediate year (in which case it would use the 1997 ozone budgets for 2022 and complete an analysis for that year instead of demonstrating consistency) or 2025 (in which it still would need to determine consistency with the 1997 ozone budgets in 2022).

Example 3

An area is designated nonattainment for the 2008 ozone NAAQS and classified as Marginal. This area was not designated nonattainment for any prior ozone NAAQS and therefore does not have any previous ozone budgets.

It is March 2013 and this area is making its initial 2008 ozone conformity determination for its transportation plan and TIP. The transportation plan ends in 2035. In addition to needing to analyze 2035 (the last year of the timeframe of the conformity determination), the area decides to analyze 2015 (a year within five years of the year the conformity determination is being made) and 2025 (an intermediate year so that analysis years are no more than 10 years apart).

This table summarizes how the conformity tests would be done for this example:

Year	Analysis Required? (40 CFR 93.119(g))	Test Used
2015	Yes – a year within five years of the year the conformity determination is being made	The build-no-greater-than-no-build test <i>or</i> The no-greater-than-baseline year emissions test
2025	Yes – intermediate year	Same as above
2035	Yes – last year of the transportation plan	Same as above

Note that only one of the interim emissions tests is required because the area is classified Marginal. The area would select from the two available tests and use the same test for all the analysis years.

3.10 Relying on a previous ozone regional emissions analysis when making a conformity determination for the 2008 ozone NAAQS

A 2008 ozone NAAQS area can rely upon a regional emissions analysis completed for the 1997 ozone NAAQS, provided that it meets the requirements in 40 CFR 93.122(g). In particular, the regionally significant projects in the transportation plan/TIP must be consistent with those assumed in the previous regional emissions analysis, and the design concept and scope of each regionally significant project cannot be significantly different from that assumed in the previous regional emissions analysis. In addition, the previous regional emissions analysis must be consistent with the requirements of 40 CFR 93.118 or 93.119, as appropriate. In particular, if the budget test is being performed, the 2008

ozone attainment year must be included as an analysis year, and the regional emissions analysis must demonstrate conformity to all currently applicable budgets.

If the previous emissions analysis did not analyze the 2008 ozone NAAQS attainment year, an area cannot rely upon 40 CFR 93.122(g) for some years and perform a new analysis just for the new attainment year. However, if nothing else has changed for previous analysis years and emissions would be exactly the same as what would be generated if a new analysis was performed (i.e., the planned projects, latest planning assumptions, and emissions models have not changed), the modeling for those analysis years would not have to be repeated. In these cases, an area could include the applicable analyses from the previous conformity determination in its new determination.

Section 4. Emissions Models to Be Used When Implementing the 2008 Ozone NAAQS

4.1 *What emissions model do I use when completing 2008 ozone conformity determinations?*

The conformity rule requires that conformity determinations must be based on the latest emissions model available (40 CFR 93.111).

Using MOVES2010

In March 2010, EPA announced the release of the MOfor Vehicle Emissions Simulator (MOVES2010).²⁵ EPA subsequently released two minor model revisions: MOVES2010a in September 2010 and MOVES2010b in April 2012. Both of these minor revisions enhance model performance and do not significantly affect the criteria pollutant emissions results from MOVES2010. See www.epa.gov/otaq/models/moves/ for more information about MOVES2010, MOVES2010a, and MOVES2010b.

MOVES will be required for new regional conformity analyses for the 2008 ozone NAAQS areas outside of California that begin after March 2, 2013 (or when EPA finds adequate or approves MOVES-based 1997 or 2008 ozone NAAQS budgets for an area, whichever comes first). Upon the release of MOVES2010, EPA established a two-year grace period before MOVES was required to be used for regional conformity determinations (75 FR 9411). EPA subsequently promulgated a final rule to provide an additional year before MOVES is required for these analyses (77 FR 11394). The MOVES grace period for regional conformity analyses applies to both the use of MOVES2010 and approved minor revisions, including MOVES2010a and MOVES2010b.

Areas with budgets for a previous ozone NAAQS that were prepared using MOBILE should consider the impacts of needing to use MOVES for future transportation plan and TIP conformity determinations. Through interagency consultation, these areas can decide whether and when SIPs and budgets can be revised with MOVES (or transportation plan and TIPs can be revised, as appropriate) prior to the end of the regional conformity grace period. Areas can also consider whether MOBILE6.2 should be used for the first conformity determination for the 2008 ozone NAAQS. If so, the regional emissions analysis must begin by March 2, 2013, the end of the MOVES2010 grace period (40 CFR 93.111(c)).

For further information on the implementation of the MOVES regional conformity grace period, see EPA's "Policy Guidance on the Use of MOVES2010 and Subsequent Minor Model Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA-420-B-12-010, April 2012), available online at: www.epa.gov/otaq/stateresources/transconf/policy.htm#models. In addition, for

²⁵ 75 FR 9411.

information regarding how to use MOVES for SIP development for the 2008 ozone NAAQS, see Question 5 of EPA’s “Policy Guidance on the Use of MOVES2010 and Subsequent Minor Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes” (EPA-420-B-12-010; April 2012).

Using EMFAC2007

EMFAC2007 is currently the latest approved model for use in transportation conformity analyses in California and should be used for all regional conformity analyses for the 2008 ozone NAAQS until EPA announces otherwise. EPA is aware that EMFAC2011 has been released by the California Air Resources Board and is currently reviewing that model. However, EMFAC2011 should not be used for any conformity analyses until EPA officially approves the model for that purpose. EPA will release additional details about how that model is to be used for transportation conformity purposes, along with any conformity grace period, at the time it approves the model.