

Transportation Conformity Guidance for 2015 Ozone NAAQS 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 2015 ozone national ambient air quality standards (2015 ozone NAAQS). Details about the nonattainment designations can be found on EPA's website at: www.epa.gov/ozone-designations.

The guidance is part of EPA's coordinated resources for areas implementing conformity for the 2015 ozone NAAQS. The Clean Air Act (CAA), transportation conformity rule and existing transportation conformity guidance serves as the basis for this guidance. Please note that EPA has not yet finalized its State Implementation Plan (SIP) requirements rule for the 2015 ozone NAAQS, as noted in Section 2.2, EPA will release additional guidance as needed once the rule is finalized.

1.2 When does conformity apply for the 2015 ozone NAAQS?

CAA section 176(c)(6) and the transportation 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. As a result, transportation conformity for the 2015 ozone NAAQS applies one year after the effective date of nonattainment designations for this NAAQS.

On June 4, 2018, EPA published a final rule that designated 51 areas as nonattainment for the 2015 ozone NAAQS (83 FR 25776). These designations are effective 60 days after the Federal Register publication, i.e. August 3, 2018. This means that conformity of transportation plans and transportation improvement programs (TIPs) for the 2015 ozone NAAQS must be demonstrated in these nonattainment areas by the end of the grace period, which is August 3, 2019.¹ After that date, project-level conformity will also apply in these areas for the 2015 ozone NAAQS.

EPA will work with 2015 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 1.5 below.

¹ Please note that EPA has not completed the designations process for the 2015 ozone NAAQS for San Antonio, TX. If this area is designated nonattainment, the transportation conformity grace period would occur one year from the effective date of such a designation.

1.3 Does the D.C. Circuit decision in South Coast Air Quality Management District v. EPA affect transportation conformity requirements for the 2015 ozone NAAQS?

No, the recent court decision does not affect transportation conformity requirements for the 2015 ozone NAAQS areas. On February 16, 2018, the District of Columbia Circuit Court of Appeals issued a decision in *South Coast Air Quality Management District v. EPA et al.*, in which parties challenged different aspects of EPA's SIP Requirements Rule for the 2008 Ozone NAAQS, including the revocation of the 1997 ozone NAAQS. The decision does not address or mention the 2015 ozone NAAQS; transportation conformity applies for the 2015 ozone NAAQS according to statute and existing regulations.

1.4 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 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 areas² for transportation-related criteria pollutants: ozone, particulate matter with diameters 2.5 micrometers and smaller (PM_{2.5}), particulate matter with diameters 10 micrometers and smaller (PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂).

1.5 Who can I contact for more information?

For transportation conformity questions concerning a particular 2015 NAAQS ozone nonattainment area, please contact the transportation conformity staff person responsible for your state at the appropriate EPA Regional Office, Federal Highway Administration (FHWA) division office or Federal Transit Administration (FTA) regional office:

- A listing of the EPA Regions, the states they cover, and contact information for conformity staff can be found at the following website: www.epa.gov/state-and-local-transportation/epa-regional-contacts-regarding-state-and-local-transportation
- Contact information for FHWA division offices can be found at: www.fhwa.dot.gov/about/field.cfm
- Contact information for FTA regional offices can be found at: www.transit.dot.gov/about/regional-offices/regional-offices

² “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.

General questions about this guidance can be directed to EPA's Office of Transportation and Air Quality, Astrid Terry, terry.astrid@epa.gov.

Additional information regarding the transportation conformity rule and associated guidance can be found on EPA's website at: www.epa.gov/state-and-local-transportation

Additional information about the 2015 ozone NAAQS nonattainment designations can be found on EPA's website at: www.epa.gov/ozone-designations/designations-2015-ozone-standards

FHWA and FTA, EPA's federal partners in implementing the conformity rule, assisted in the development of this guidance and concurred on its content.

1.6 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 for the initial conformity determination in areas that have been designated nonattainment for the 2015 ozone NAAQS.

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. 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 applicable regulations. This guidance may be revised periodically without public notice.

1.7 What impact will the implementation of the 2015 ozone NAAQS have on an air agency's transportation conformity SIP?

A transportation conformity SIP includes a state's specific criteria and procedures for certain aspects of the transportation conformity process (40 CFR 51.390). In general, states do not need to revise their existing transportation conformity SIPs in response to the designations for the 2015 ozone NAAQS, since there have been no changes in the transportation conformity regulations for the 2015 ozone NAAQS. However, any states with new nonattainment areas that have not been covered by a previous ozone NAAQS may need to revise their existing transportation conformity SIPs in order to ensure the state regulations apply in any newly designated areas. Information and guidance for

conformity SIPs can be found in the EPA's "[Guidance for Developing Transportation Conformity State Implementation Plans \(SIPs\)](#)."³

³ See <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1002W5B.PDF?Dockey=P1002W5B.PDF>

Section 2. Implementation of the 2015 Ozone NAAQS

2.1 When will conformity apply for the 2015 ozone NAAQS?

As noted in Section 1.2, 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. Section 40 CFR 93.102(d) states:

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM₁₀, PM_{2.5} or NO₂ since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of this subpart shall not apply with respect to that NAAQS for 12 months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

Therefore, transportation conformity for the 2015 ozone NAAQS does not apply until one year after the effective date of nonattainment designations, which is August 3, 2019 for this NAAQS.⁴

Section 2.4 provides further details for how the one-year grace period applies in newly designated nonattainment areas for the 2015 ozone NAAQS in: 1) areas with a Metropolitan Planning Organization (MPO), and 2) isolated rural areas.

2.2 Will EPA revoke the 2008 ozone NAAQS?

In November 2016, EPA proposed a SIP requirements rule for the 2015 ozone NAAQS that included two alternative options for revoking the 2008 ozone NAAQS.⁵ At this time, EPA has not finalized that proposal and as a result, conformity for the 2008 ozone NAAQS continues to be required in 2008 ozone NAAQS nonattainment and maintenance areas. After the ozone SIP requirements rule is finalized, EPA will provide additional transportation conformity-related guidance as needed.

As described in Section 1.3, the recent *South Coast* court decision from the D.C. Circuit does not address or reference the 2015 ozone NAAQS. Transportation conformity applies for the 2015 ozone NAAQS according to the statute and existing regulations.

⁴ For any additional nonattainment designations that occur, the transportation conformity grace period is one year from the effective date of the designations.

⁵ [81 FR 81276](#) (published November 17, 2016).

2.3 What guidance is available for Multi-jurisdictional areas?

In 2012, EPA 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”).⁶ The Multi-jurisdictional Guidance describes how conformity determinations are made on metropolitan transportation plans and TIPs when a nonattainment or maintenance area involves more than one MPO, more than one state, or both, and describes what conformity tests apply.

Today’s guidance describes how the conformity rule and the Multi-jurisdictional Guidance specifically apply in the context of the 2015 ozone NAAQS. This should help agencies implementing the 2015 ozone NAAQS address the situations specific to this NAAQS likely to be encountered. The Multi-jurisdictional Guidance and this guidance are consistent with each other as both are based on the conformity regulations.

2.4 What should be considered when making initial 2015 ozone NAAQS conformity determinations?

Nonattainment Areas with One or More MPO

An MPO⁷ and DOT must make a conformity determination for the 2015 ozone NAAQS for the metropolitan transportation plan and TIP within one year after the effective date of the initial nonattainment designation for a particular area 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 the end of the grace period. However, if the MPO and DOT miss the deadline, the nonattainment area would enter a conformity “lapse”. See Section 2.5 for more information on lapses.

MPOs must continue to meet conformity requirements for any other applicable NAAQS. 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.

⁶ <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100EQXE.pdf>

⁷ A metropolitan planning organization (MPO) is defined in 40 CFR 93.101 as the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

Conformity determinations made by an MPO (or MPOs) must also include any donut areas⁸ within the 2015 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 can be made for donut areas, see EPA's Multi-jurisdictional Guidance.

Isolated Rural Nonattainment Areas

In isolated rural areas, as in other newly designated nonattainment areas, the one-year conformity grace period for the 2015 ozone NAAQS will begin on the effective date of an isolated rural area's initial nonattainment designation.⁹ However, because these areas do not have federally required metropolitan transportation plans and TIPs, they are not subject to the frequency requirements for conformity determinations on transportation plans and TIPs (40 CFR 93.104(b), (c), and (e)). 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 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).

FHWA/FTA Projects

Project-level conformity determinations are required for non-exempt Federal highway and transit projects in the 2015 ozone NAAQS nonattainment areas after the one-year conformity grace period (40 CFR 93.102(d), 93.104(d)). Project-level conformity is determined prior to the first time a non-exempt federal project is adopted, accepted, approved or funded.

2.5 What happens if a 2015 ozone NAAQS 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 2015 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), until the area has both a

⁸ 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.

⁹ 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.

conforming transportation plan and TIP.¹⁰ 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.¹¹

2.6 *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 2015 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.

¹⁰ See www.fhwa.dot.gov/ENVIRONMENT/air_quality/conformity/policy_and_guidance/faqs/lapsegrace.cfm for guidance for which projects can move forward during a lapse.

¹¹ See 73 FR 4423-4424 (January 24, 2008) and the Multi-jurisdictional Guidance for additional details about the lapse grace period.

Section 3. Completing Transportation Plan and TIP Conformity Determinations for the 2015 Ozone NAAQS

The transportation conformity rule describes how to determine conformity for transportation plans, TIPs, and projects not from a conforming plan or TIP, and describes what is 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 2015 ozone NAAQS area has adequate or approved motor vehicle emissions budgets (budgets) for any ozone NAAQS, the budget test requirements in 40 CFR 93.118 must be met. When a 2015 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 2015 ozone NAAQS 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 2015 ozone NAAQS SIP budgets are found adequate or approved, areas must use the budget test with those budgets to determine 2015 ozone NAAQS conformity (40 CFR 93.109(c)(1)). This section focuses on how 2015 ozone NAAQS areas determine conformity before such 2015 ozone NAAQS 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 2015 ozone NAAQS

For all areas where transportation conformity applies, including the 2015 ozone NAAQS areas, Table 1 found in 40 CFR 93.109(b) lists the conformity criteria in 40 CFR 93.110 through 93.119 that apply for metropolitan transportation plans, TIPs, and projects.

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

- Use the latest planning assumptions (40 CFR 93.110);
- Use the latest emissions model (40 CFR 93.111);¹²
- Pass the appropriate conformity test – the budget test and/or the interim emissions test(s) (40 CFR 93.118 and 93.119).

It may be possible to rely on a previous regional emissions analysis (40 CFR 93.122(g)). See Section 3.11 for more details.

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);

¹² See Section 3.12 for more information about which emissions model should be used for regional emissions analyses for the 2015 ozone NAAQS.

- 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.

3.2 Conformity tests for the first conformity determination for the 2015 ozone NAAQS

It is not expected that SIP budgets for the 2015 ozone NAAQS will be available in time for the first conformity determination. Most if not all 2015 ozone NAAQS areas will have to rely on the conformity tests in 40 CFR 93.109(c)(2) and (3). See Section 3.8 for identification of analysis years for the 2015 ozone NAAQS. Areas would use the most recently established ozone budgets that are available. That is, if an area has budgets for both the 2008 and 1997 ozone NAAQS, it would use only the budgets for the 2008 ozone NAAQS for meeting 2015 ozone NAAQS conformity because those would have been established more recently, even if the 1997 ozone NAAQS budgets are for a later year. For example, for each analysis year for the 2015 ozone NAAQS:

If 2008 ozone NAAQS budgets are available, an area would:

- Use 2008 ozone budgets that are established for that year or the most recent prior year (see Sections 3.3 and 3.4) and disregard budgets for any previous ozone NAAQS.¹³

If the area has no 2008 ozone NAAQS budgets but 1997 ozone NAAQS budgets are available:

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

If the area has no 2008 or 1997 ozone NAAQS budgets but 1-hour ozone NAAQS budgets are available:

- Use the 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 2008, 1997 or 1-hour ozone NAAQS budgets are available at all:

- Use the interim emissions test or tests, according to the 2015 ozone NAAQS 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, in which case the interagency consultation process should

¹³ 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.

be used to determine how to apply the available budget and interim emissions test, as described below (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) or budget(s) applies in each 2015 ozone NAAQS area for the first determination. See Section 1.5 for EPA contact information.

3.3 Using budgets from a previous ozone NAAQS for 2015 ozone NAAQS conformity

In general, if an area does not have budgets for the 2015 ozone NAAQS, but has budgets for a previous ozone NAAQS (i.e., the 2008, 1997 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)).

For purposes of the 2015 ozone NAAQS areas that have budgets from a previous ozone NAAQS, the four scenarios¹⁴ are:

- Scenario 1: Boundaries for both the 2015 ozone NAAQS and previous ozone NAAQS areas are identical.
- Scenario 2: The boundary of the 2015 ozone NAAQS area is smaller than and completely within the area designated for the previous ozone NAAQS.
- Scenario 3: The boundary of the 2015 ozone NAAQS area is larger than and contains the area designated for the previous ozone NAAQS.
- Scenario 4: The boundary of the 2015 ozone NAAQS area overlaps with a portion of the area designated for the previous ozone NAAQS.

Areas designated nonattainment for the 2015 ozone NAAQS are “Scenario 1” areas if the boundaries of the 2015 nonattainment area are identical to the boundaries for a previous ozone NAAQS. These areas must demonstrate conformity by meeting the budget test for the 2015 ozone NAAQS using existing adequate or approved SIP budgets for the previous ozone NAAQS until adequate or approved budgets for the 2015 ozone NAAQS are effective (40 CFR 93.109(c)(2)(i)).

¹⁴ See “[Guidance for Transportation Conformity Implementation in Multi-jurisdictional Nonattainment and Maintenance Areas](#),” (EPA420-B-12-046, July 2012) for more information.

For “Scenario 2” areas, where areas have budgets for a previous ozone NAAQS that cover an area larger than that designated for the 2015 ozone NAAQS, 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)).

For “Scenario 3” areas, where the 2015 ozone NAAQS area is larger than the geographic area covered by ozone budgets for a previous NAAQS. In these areas, the interagency consultation process should be used to determine how to apply the budget test and interim emissions test(s).¹⁵ Refer to the conformity regulation for more information on the interim emissions tests.

For “Scenario 4” areas where the 2015 ozone NAAQS areas overlap with a portion of the area designated for the previous ozone NAAQS, 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 NAAQS 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 2015 ozone NAAQS 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 2015 ozone NAAQS areas that have budgets for a previous ozone NAAQS

For 2015 ozone NAAQS 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 2015 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 2015 ozone NAAQS area, as they have done for the previous ozone NAAQS (40 CFR 93.124(d)). MPOs must coordinate their

¹⁵ For these areas, EPA notes that the regulation at 40 CFR 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.

transportation plan/TIP conformity determinations and submit them to DOT. Once DOT receives all plan/TIP conformity determinations for the 2015 ozone NAAQS area, DOT will make its conformity determinations at the same time. All MPOs within the area must have a conformity determination for the 2015 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 2015 ozone NAAQS area and all of the MPOs' transportation plans and TIPs will lapse.

Subarea budgets. Where subarea budgets¹⁶ exist for a previous ozone NAAQS, these subarea budgets must also be used in the 2015 ozone NAAQS 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 2015 ozone NAAQS to be performed as follows: each MPO would demonstrate conformity of its transportation plan and TIP to the 2015 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 2015 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 2015 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 2015 ozone NAAQS area, and all of the MPOs' transportation plans and TIPs will lapse.¹⁷

Multi-state areas. For multi-state 2015 ozone NAAQS 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 2015 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 2015 ozone NAAQS (including the initial conformity determination) can be made in one state of a multi-state 2015 ozone NAAQS 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 2015 ozone NAAQS in another state in the area, or if a lapse occurs in another state in the 2015 ozone NAAQS area. Similarly, for multi-state areas with one MPO for the entire area, the MPO can determine conformity for one state independently from the other(s), as long as adequate/approved budgets are available for that state's portion of the nonattainment area.

¹⁶ 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.

¹⁷ 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 2015 ozone NAAQS conformity*

As mentioned in Sections 3.2 and 3.3, some 2015 ozone NAAQS 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 2015 ozone NAAQS 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 2015 ozone NAAQS nonattainment areas must use the interim emissions test(s) for conformity determinations conducted before adequate or approved 2015 ozone NAAQS SIP budgets are established, the following provisions apply (40 CFR 93.119):

Areas classified Moderate and above for the 2015 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 the 2015 ozone NAAQS is 2017. Refer to Section 3.7 for more on the baseline year test.

Areas classified Marginal for the 2015 ozone NAAQS must conduct *one* of these tests:

- 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 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 2015 ozone NAAQS 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 2015 ozone NAAQS 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 transportation 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.¹⁸ For the 2015 ozone NAAQS, this year is 2017. Conformity determinations using the baseline year test as an interim emissions test must therefore use 2017 as the baseline year. See www.epa.gov/state-and-local-transportation/baseline-year-baseline-year-test-40-cfr-93119 for more information on baseline years.

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 3.12 for more information about emissions models to be used when implementing the 2015 ozone NAAQS.

¹⁸ This change was made in the final Transportation Conformity Restructuring Rule (77 FR 14979 (March 14, 2012)).

3.8 *Analysis years for 2015 ozone NAAQS conformity*

The years required to be analyzed for 2015 ozone NAAQS conformity depend 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 2015 ozone NAAQS, 40 CFR 93.118(d)(2) requires the regional emissions analysis to be performed for:

- The attainment year for the 2015 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 and after the one-year grace period, the 2015 ozone NAAQS areas with adequate or approved 2008, 1997 or 1-hour ozone budgets can determine conformity for applicable NAAQS at the same time. See Section 3.11 for cases for relying on a previous regional emissions analysis, whether one analysis can satisfy requirements for multiple ozone NAAQS. See Section 3.9 for the attainment years for the 2015 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)).¹⁹

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 five 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.

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 2015 ozone NAAQS, the interagency consultation process must be used to determine which analysis years should be selected for regional emissions analyses 40 CFR 93.105(c)). This situation may occur either because budgets are not

¹⁹ 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.

available for some analysis years²⁰ or because budgets do not cover the entire 2015 ozone NAAQS 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 What years should be used as the attainment years for 2015 ozone NAAQS transportation conformity?

Where 2015 ozone NAAQS areas have adequate or approved ozone NAAQS budgets, they would use the budget test in 40 CFR 93.118 for conformity. As described in 3.8 above, when using the budget test, the attainment year is an analysis year, based on 40 CFR 93.118(d).

EPA published a final rule on March 9, 2018 that established the approach for classifying nonattainment areas and established the attainment dates associated with each of the classifications. (See 83 FR 10380). Areas designated nonattainment for the 2015 ozone NAAQS were classified into one of the following categories, based on the severity of their ozone problem: Marginal, Moderate, Serious, Severe, or Extreme. Until a 2015 ozone NAAQS area develops an attainment demonstration, it should use the applicable attainment date in the table below as the attainment year in its conformity analyses:

Classification	Attainment Date
Marginal	August 3, 2021
Moderate	August 3, 2024
Serious	August 3, 2027
Severe - 15	August 3, 2033
Severe – 17	August 3, 2035
Extreme	August 3, 2038

Once a 2015 ozone NAAQS attainment demonstration SIP is submitted and the budgets are found adequate or approved, the SIP will establish the attainment year that is used for conformity determinations. Areas must consider the attainment year established in the SIP as the attainment year for demonstrating consistency and conducting conformity analyses as required by 40 CFR 93.118(b) and (d) respectively of the conformity rule.

²⁰ 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 2015 ozone NAAQS area that is a Scenario 1 area. This area has 2008 ozone NAAQS maintenance budgets for the year 2022, and that is the only year for which ozone budgets exist. In this case, the 2015 ozone NAAQS 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.

3.10 Examples for 2015 ozone NAAQS conformity determinations

Below are two hypothetical examples of how an area would apply the conformity tests given different scenarios, budgets, and analysis years. In Examples 1 and 2, these hypothetical areas have chosen to determine conformity for the 2015 and 2008 ozone NAAQS at the same time.

Example 1

In this example, an area that is designated nonattainment for the 2015 ozone NAAQS is also nonattainment for the 2008 ozone NAAQS and is a Scenario 1 area (i.e., the boundaries of the 2008 ozone NAAQS and 2015 ozone NAAQS areas are identical). The area has 2008 ozone budgets for 2017. The area is classified Marginal for the 2015 ozone NAAQS with an attainment year of 2020.

In March 2019, the MPO is making a conformity determination for both the 2008 and 2015 ozone NAAQS for its transportation plan and TIP. The last year of the transportation plan is 2040. In addition to needing to analyze 2020 (the area's attainment year for the 2015 ozone NAAQS) and 2040 (the last year of the timeframe of the conformity determination), the area decides to analyze 2030 (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 93.118(d)(2))	Test Used
2020	Yes – attainment year for 2015 ozone NAAQS	2008 ozone NAAQS budgets for 2017
2030	Yes – intermediate year	2008 ozone NAAQS budgets for 2017
2040	Yes – last year of the transportation plan	2008 ozone NAAQS budgets for 2017

Example 2

In this example, an area is designated nonattainment for the 2015 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 2019 and this area is making its initial 2015 ozone NAAQS conformity determination for its transportation plan and TIP. The last year of the transportation plan is 2040. In addition to needing to analyze 2040 (the last year of the timeframe of the conformity determination), the area decides to analyze 2020 (a year within five years of the year the conformity determination is being made) and 2030 (an intermediate year so that analysis years are no more than ten 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
2020	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
2030	Yes – intermediate year	Same as above
2040	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.

3.11 Relying on a previous ozone regional emissions analysis when making a conformity determination for the 2015 ozone NAAQS

A 2015 ozone NAAQS area can rely upon a regional emissions analysis completed for a previous ozone NAAQS, provided that it meets the requirements in 40 CFR 93.122(g) for the 2015 ozone NAAQS. In particular, 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 2015 ozone NAAQS attainment year must be included as an analysis year, and the regional emissions analysis must demonstrate conformity to the most recent adequate or approved ozone NAAQS budgets.

If the previous emissions analysis did not analyze the 2015 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 modeling work from the previous conformity determination in its new determination.

3.12 What emissions model would be used for completing 2015 ozone NAAQS conformity determinations?

The transportation conformity rule requires that conformity determinations must be based on the latest emissions model available (40 CFR 93.111). Currently, MOVES2014a is the latest version of MOVES available, and used in all states other than California.²¹ For more information about MOVES including the EPA announcements, emissions data, and new features included in the latest version of the model, please see www.epa.gov/moves.

EMFAC2014 is currently the latest approved model for use in transportation conformity analyses in California. (EPA is aware that versions of EMFAC2017 has been made available through the California Air Resources Board's public process.) However, EMFAC2017 should not be used for any conformity analyses until EPA officially approves the model for that purpose and provides additional details about using EMFAC2017 for transportation conformity purposes.

²¹ This guidance is applicable to MOVES2014, MOVES2014a, and future versions of the MOVES model unless EPA notes otherwise when releasing the model for conformity purposes.