
Guidance for Transportation Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance 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: Introduction

1.1 What is the purpose of this guidance?

This guidance describes how transportation conformity determinations are done in areas where multiple metropolitan planning organizations (MPOs), states, and/or other agencies have jurisdiction in a nonattainment or maintenance area. This guidance updates and supersedes the July 2004 “Companion Guidance for the July 1, 2004 Final Transportation Conformity Rule: Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards” (EPA420-B-04-012). In the 2004 guidance, EPA clarified how transportation conformity determinations are completed where multiple agencies or states are involved in nonattainment and maintenance areas specifically for the 1997 ozone and PM_{2.5} National Ambient Air Quality Standards (NAAQS). EPA’s transportation conformity rule (40 CFR Parts 51 and 93) establishes the criteria and procedures for determining whether transportation plans, transportation improvement programs (TIPs), and federally funded or approved highway and transit projects are consistent with (“conform to”) state air quality goals.

This updated guidance is being released as part of a larger EPA effort to restructure the transportation conformity regulations so that they apply to existing and future NAAQS. EPA published the Transportation Conformity Rule Restructuring Amendments (“Conformity Restructuring” rule) on March 14, 2012 (77 FR 14979), which restructures two sections of the transportation conformity rule so that existing requirements apply for any NAAQS, including new or revised NAAQS promulgated in the future. This guidance describes how the provisions that were updated in the Conformity Restructuring rule apply in various types of areas and will assist state and local governments in implementing conformity requirements. It does not change the substance of the 2004 guidance for addressing conformity requirements in multi-jurisdictional areas because the revisions to the conformity regulations did not change the requirements for the conformity tests. This guidance reflects the revised structure of the conformity regulations issued in the Conformity Restructuring rule.

Specifically, this guidance covers questions for multi-jurisdictional areas such as:

- What geographic area is covered by a conformity determination and regional emissions analysis?¹
- How is the regional emissions analysis implemented?
- Who does what to develop the regional emissions analysis?
- What regional emissions test or tests apply for multi-jurisdictional areas that have adequate or approved State Implementation Plan (SIP) motor vehicle emissions budgets (“budgets”) for a specific transportation-related criteria pollutant?²
- How can multiple agencies create a regional emissions analysis for the entire nonattainment area before the area has SIP budgets for a relevant criteria pollutant?

¹ A regional emissions analysis is the part of a conformity determination that assesses whether the emissions produced by transportation activities are consistent with state air quality goals. See 40 CFR 93.122 for details.

² Transportation conformity applies in nonattainment areas and areas designated attainment after 1990 (“maintenance areas”) for ozone, carbon monoxide, nitrogen dioxide, PM₁₀ and PM_{2.5} (40 CFR 93.102(b)).

This guidance covers both existing and future nonattainment and maintenance areas and highlights opportunities for flexibility. It provides examples and interpretations for generic scenarios involving regional emissions analyses that may occur in the field. In the event implementers have questions that are not addressed in this guidance, they should consult EPA and the U.S. Department of Transportation (DOT).

DOT is EPA's federal partner in implementing the conformity regulation. DOT participated in the development of this guidance and concurred on its content.

The interagency consultation process is of key importance in multi-jurisdictional areas. Given the fact that no two areas that implement conformity are exactly alike, the interagency consultation process must be used to make the best choices for an area's circumstances where the conformity rule provides flexibility. The interagency consultation provision of the conformity rule, 40 CFR 93.105, requires that general processes and specific decisions be made through established interagency consultation procedures.

1.2 Who can I contact for more information?

For specific questions concerning a particular nonattainment or maintenance area, please contact the 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:
<http://www.epa.gov/otaq/stateresources/transconf/contacts.htm>
- Contact information for FHWA division offices can be found at:
<http://www.fhwa.dot.gov/about/field.cfm>
- Contact information for FTA regional offices can be found at:
<http://www.fta.dot.gov/about/12926.html>

General questions about this guidance can be directed to EPA's Office of Transportation and Air Quality: Laura Berry at berry.laura@epa.gov or (734) 214-4858, or Meg Patulski at patulski.meg@epa.gov or (734) 214-4842.

Readers can also find this guidance document, the complete transportation conformity regulation, and other materials on EPA's website at:

<http://www.epa.gov/otaq/stateresources/transconf/index.htm>

1.3 Does this guidance create new conformity requirements?

No. This guidance is based on the requirements for conformity implementation contained in CAA section 176(c) and 40 CFR Parts 51.390 and 93 Subpart A. This guidance does not create any new conformity requirements. This guidance merely explains how to implement conformity requirements in multi-jurisdictional areas.

The statutory provisions and the EPA regulations described in this document contain legally binding requirements. This document is not a substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, DOT, states, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA retains the discretion to adopt approaches on a case-by-case basis that may differ from this guidance, but still comply with the statute and conformity and other regulations. This guidance may be revised periodically without public notice.

1.4 What is a multi-jurisdictional area?

A multi-jurisdictional area is a nonattainment or maintenance area with several agencies (e.g., MPOs, state agencies) that conduct transportation and/or air quality planning. Multi-jurisdictional areas are nonattainment and maintenance areas that:

- Have multiple MPOs, or
- Have one or more MPOs and a donut area, and/or
- Are located in more than one state.

One MPO that covers more than one nonattainment or maintenance area would also be considered a multi-jurisdictional area. The MPO is the agency that is responsible for preparing metropolitan transportation plans (hereafter called “transportation plans”) and TIPs and demonstrating that transportation plans and TIPs conform to the purpose of the SIP before they are adopted. An MPO is established for each metropolitan area according to Section 134 of Title 23, United States Code and Section 5303 of Title 49, United States Code. The conformity rule at 40 CFR 93.101 includes the following definition of an MPO:

“...the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).”

MPO planning boundaries are established according to Titles 23 and 49 of the United States Code (as cited above) and DOT’s metropolitan planning regulations. The conformity rule does not dictate how MPO planning boundaries are established.

In most cases, a conformity determination for a transportation plan, TIP, or project not from a conforming transportation plan or TIP includes a regional emissions analysis in which emissions from the planned transportation system are estimated according to 40 CFR 93.122.

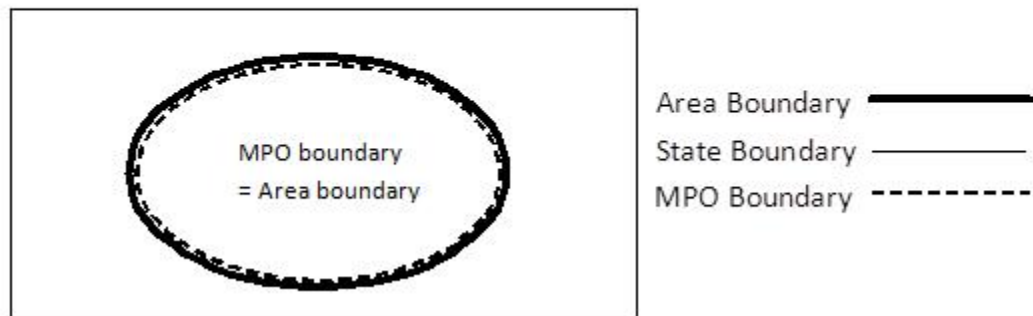
Whether a nonattainment or maintenance area contains more than one MPO, a donut area, and/or is located within more than one state, the conformity regulation process includes flexibility to accommodate the many differences in state and local agency roles and planning processes across the country.

Sections 1.4.1 through 1.4.5 describe different situations of nonattainment/maintenance area boundaries, MPO boundaries, and state boundaries.

1.4.1 One MPO, One State (not a multi-jurisdictional area)

To contrast the remainder of this guidance, first it is useful to describe a conformity determination in the case where there is a single jurisdiction responsible for transportation planning and a single jurisdiction responsible for air quality planning. In the simplest case, a nonattainment or maintenance area is located entirely within one state, and the boundary of the nonattainment or maintenance area is exactly the same as the MPO boundary, as shown in Figure 1.1 below.

Figure 1.1: A Nonattainment or Maintenance Area with One MPO in a Single State (not a multi-jurisdictional area)



This is not a multi-jurisdictional area. In this situation, there is just one MPO responsible for transportation planning and conformity determinations in the area and one air quality agency responsible for air quality planning. There is no donut area within the nonattainment or maintenance area and the area is located in just one state.

1.4.2 More than One MPO

The MPO boundary may not correspond to the nonattainment or maintenance area boundary, nor is a nonattainment or maintenance area always covered by a single MPO. In these cases, there may be more than one MPO responsible for transportation planning and conformity determinations in the nonattainment or maintenance area, as shown in Figure 1.2 below.

Figure 1.2: A Nonattainment or Maintenance Area with Two MPOs, in a Single State



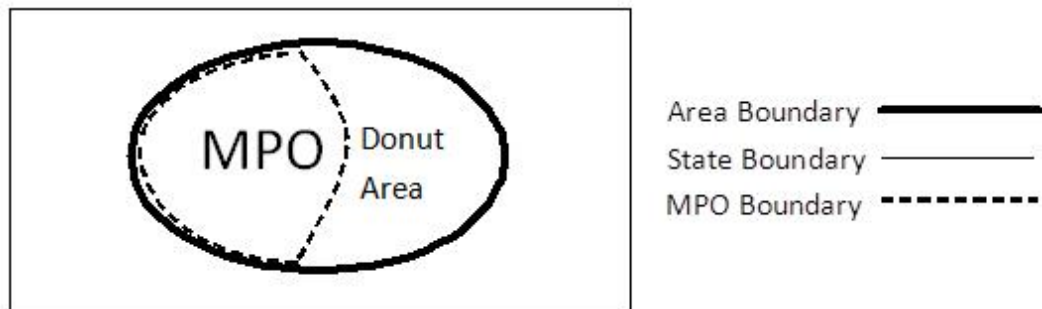
1.4.3 Donut Areas

There may be other cases where some portion of the nonattainment or maintenance area is not included in an MPO’s jurisdiction, also known as a “donut area.” As defined in 40 CFR 93.101:

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

If the nonattainment or maintenance area includes an MPO, any areas outside of the MPO(s) boundaries would be the donut area(s). Though the word “donut” implies that the boundary of the MPO would be entirely within the nonattainment or maintenance area boundary to form two concentric circles, a nonattainment or maintenance area’s donut area may more typically resemble that shown in Figure 1.3 below. Donut areas could exist as part of a single state or multi-state nonattainment or maintenance area.

Figure 1.3: A Nonattainment or Maintenance Area with a Donut Area, in a Single State



1.4.4 Multi-State Areas

There are also cases where a nonattainment or maintenance area's boundary includes parts of more than one state, as shown in Figures 1.4a and 1.4b below. One MPO may cover the entire multi-state nonattainment or maintenance area (Figure 1.4a), or separate MPOs may cover each state's portion of the area (Figure 1.4b). These multi-state areas may also include donut areas in one or more states.

Figure 1.4a: A Multi-state Nonattainment or Maintenance Area with One MPO

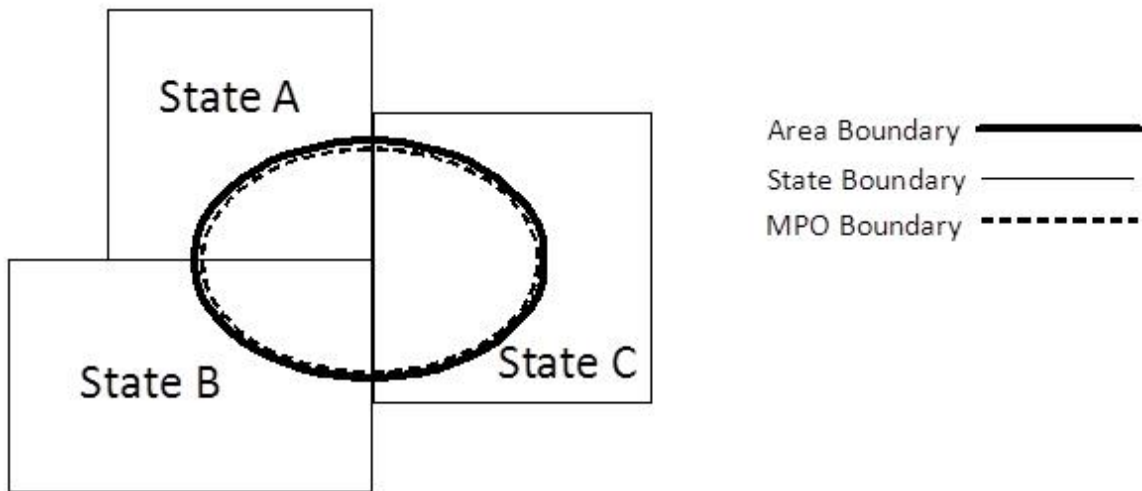
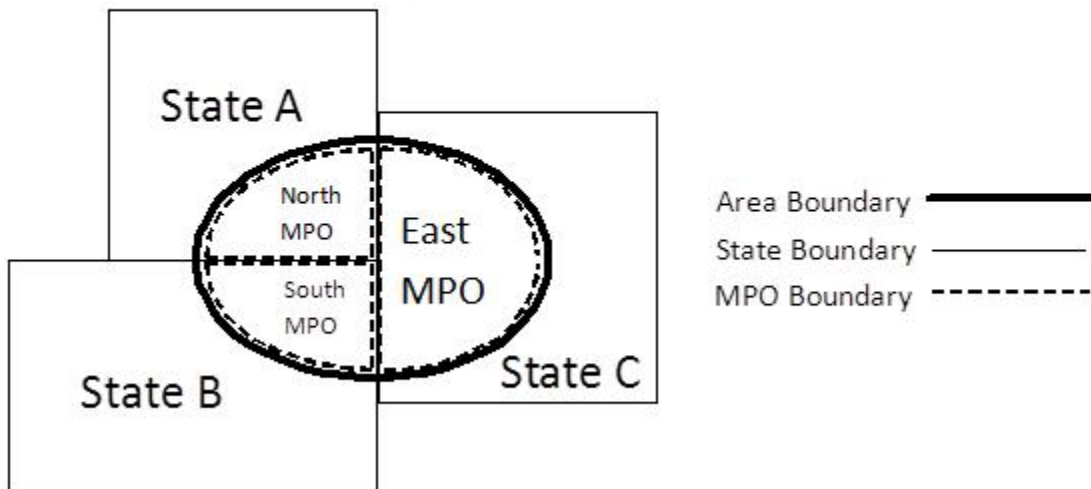


Figure 1.4b: A Multi-state Nonattainment or Maintenance Area with Multiple MPOs



1.4.5 One MPO that Covers More Than One Nonattainment or Maintenance Area

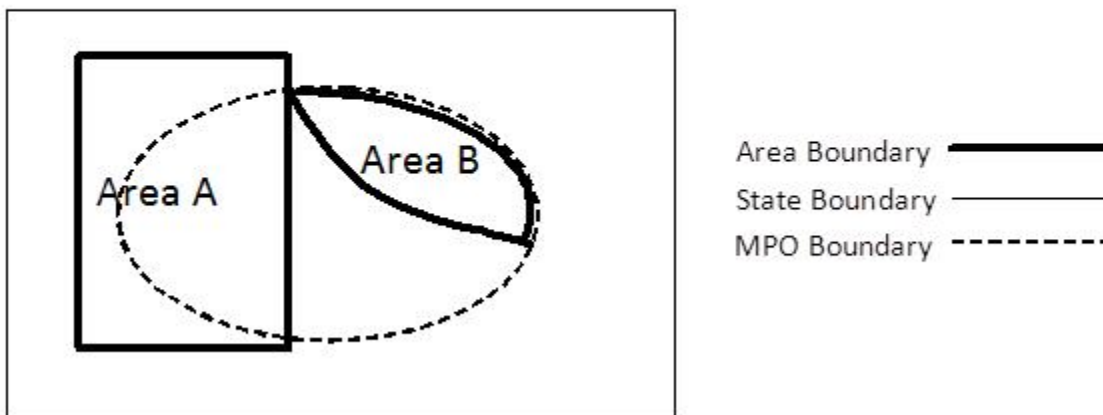
Finally, there are some MPOs that are responsible for transportation planning and conformity determinations in more than one nonattainment or maintenance area. This guidance applies to such MPOs as well. The November 24, 1993 conformity rule preamble addresses the case where an MPO is responsible for more than one area, which continues to apply:

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

In these cases, a single MPO that is responsible for transportation planning for more than one nonattainment or maintenance area must determine conformity for each nonattainment or maintenance area separately.

As an example, suppose an MPO encompasses two counties, as illustrated in Figure 1.5. One of these counties is located in one PM_{2.5} nonattainment area (Area A), while the other county is located in another, adjacent PM_{2.5} nonattainment area (Area B).

Figure 1.5: An MPO that Covers More Than One Nonattainment or Maintenance Area in One State



Sections 2 through 4 of this guidance include details for how conformity would be determined for the portion of such an MPO’s transportation plan and TIP for each nonattainment or maintenance area.

1.5 What are the general requirements for interagency consultation when determining conformity for a transportation plan/TIP?

Interagency consultation is required in all nonattainment and maintenance areas where conformity applies. Interagency consultation procedures for a nonattainment or maintenance area are formally integrated into the conformity SIP and are legally enforceable.³ A state's conformity SIP, or the federal regulations at 40 CFR 93.105 govern the decision-making process and specifically require that a process be established to evaluate and choose a model, associated methods, and assumptions to be used in the regional emissions analysis.

Interagency consultation ensures that agencies involved in the conformity process meet regularly, share information, and identify key issues early in the conformity process. Additionally, the process ensures that schedules are coordinated for transportation plan/TIP conformity determinations and SIP development.

The agencies responsible for the conformity determination and regional emissions analysis in multi-jurisdictional nonattainment and maintenance areas must develop interagency consultation procedures to address certain decisions such as:

- The timing of individual transportation plan and TIP conformity determinations in those circumstances where they need to be coordinated;
- The analysis years that will be examined in the regional emissions analysis;
- The agency that will analyze emissions for any donut area that is part of the nonattainment or maintenance area (see Section 1.6 for more information);
- The emissions model to be used for the regional emissions analysis, in the case where there is more than one emissions model that could be used (e.g., during a new model grace period), per 40 CFR 93.111;
- The planning assumptions to be used in the regional emissions analysis and the sources of that information.

Per 40 CFR 93.105(b)(1), state air agencies must use the interagency consultation process in developing SIP budgets, including establishing subarea budgets for MPOs or individual state budgets in multi-jurisdictional areas.

1.6 Who is responsible for estimating emissions in a donut area of a nonattainment or maintenance area?

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

- The MPO within the nonattainment or maintenance area. In some cases, an adjacent MPO is best suited to conduct such an analysis. An MPO could run a separate analysis

³ For additional information on conformity SIPs, please refer to the January 2009 guidance entitled, "Guidance for Developing Transportation Conformity State Implementation Plans" available on EPA's website at www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf.

for the donut area's projects and add the emissions to the MPO's analysis. The MPO could also include the donut area's projects in its regional model and estimate emissions for the entire area. An MPO could also include the donut area's projects in its transportation plan and TIP, but this practice is not common;

- The state DOT. In some cases, the state DOT may take the lead in estimating emissions for the donut area and provide the results to the MPO; or
- Another local planning agency. In limited cases, another local planning agency in the donut area (e.g., a county planning commission) may also be the lead agency for the donut area.

The conformity rule at 40 CFR 93.105(c)(3) relies on the interagency consultation process (including the MPO and state DOT) to determine how best to consider projects that are planned for donut areas located outside the metropolitan area and within the nonattainment or maintenance area in the conformity process. Section 93.105 of the conformity rule also requires that such procedures for demonstrating conformity of donut area projects be included in an area's conformity SIP that is approved by EPA, according to 40 CFR 51.390.

Section 2: Conformity Determinations and Regional Emissions Analyses in Areas without Any Budgets

2.1 To what areas does this section of the guidance apply?

Section 2 of this guidance applies to areas that are determining conformity for a NAAQS but do not yet have any budgets for that pollutant.

This section of the guidance does not cover:

- Areas that have a budget for the NAAQS for which they are designated nonattainment (the relevant NAAQS);
- Areas that have a budget for another NAAQS of the same pollutant;
- Maintenance areas, as these areas by definition have approved SIPs with budgets, in most cases.

2.2 What tests are used for the regional emissions analysis before a nonattainment area has budgets for a relevant pollutant?

Conformity applies for a NAAQS one year after the effective date of EPA's nonattainment designation for that NAAQS typically before an area is able to submit a SIP for the NAAQS containing budgets and those budgets are found adequate. If an area does not have an adequate or approved budget(s) for the relevant NAAQS or another NAAQS of the same pollutant, the regional emissions analysis and conformity determination must be based on the interim emissions test(s) (40 CFR 93.109(c)(3)). The interim emissions tests, described in 40 CFR 93.119, include different forms of the "build/no-build" test and "baseline year" test.

In general, the regional emissions analysis using the build/no-build test compares emissions from the planned (or "build") transportation system in an analysis year with emissions from the existing (or "no-build") transportation system in the same analysis year. In the baseline year test, emissions from the planned transportation system in an analysis year are compared to emissions that occurred in the relevant baseline year.

2.3 What geographic area must be examined in regional emissions analyses and conformity determinations before a nonattainment area has budgets?

A conformity determination for a transportation plan, TIP, or project not from a conforming plan or TIP must be based on a regional emissions analysis that covers the entire nonattainment area, to satisfy the statute and regulations (40 CFR 93.122(a)(1)).

There must be a regional emissions analysis for the entire nonattainment area, whether the nonattainment area includes one MPO or more than one MPO, a donut area, portions of more than one state, or any combination of these jurisdictions.

For all nonattainment areas covered by this section, the MPO(s) must complete their transportation plan/TIP conformity determinations for the entire nonattainment area and coordinate their conformity determinations, pursuant to 40 CFR 93.124(d). Specifically, 40 CFR 93.124(d) states:

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

Once DOT receives all transportation plan/TIP conformity determinations for MPOs in a given nonattainment area, DOT will make its conformity determinations at the same time. In order for one MPO to update or revise its transportation plan and TIP, a DOT conformity determination for each transportation plan and TIP in that nonattainment area must be made at the same time, according to 40 CFR 93.124(d). See Section 2.4.3 on coordinating transportation plan and TIP update cycles among MPOs. Therefore, in cases where no budgets exist, the MPOs would not be making conformity determinations for transportation plans and TIPs on independent schedules, but on the same schedule.

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

2.4 How can multiple agencies create a regional emissions analysis for the entire nonattainment area?

The agencies involved in the conformity process in a nonattainment area where there is more than one MPO and/or a donut area must use the interagency consultation process required by 40 CFR 93.105 to decide how best to meet this requirement, regardless of whether the area is within one state or is a multi-state area. The interagency consultation process would be used to decide which interim emissions tests apply and what analysis years are used. MPOs must use the same tests and analysis years for the entire nonattainment area, as described in Section 2.5 of this guidance.

2.4.1 More Than One MPO, in One or More States (without a Donut Area)

In a nonattainment area where there is more than one MPO, the MPOs can develop the regional emissions analysis using either of the below options:

- Option 1: By separate modeling by each MPO that is combined into one regional emissions analysis for the entire nonattainment area
- Option 2: By one modeling analysis for the entire nonattainment area

If MPOs in the nonattainment area want to model their emissions separately (Option 1), each MPO would perform a regional emissions analysis that would show that the applicable interim emissions test(s) are met for each analysis year under the regulations. These results would then be compiled in one regional emissions analysis for the entire nonattainment area that would accompany each transportation plan/TIP conformity determination. The MPOs in the nonattainment area can work independently to complete the regional emissions analysis for their own parts of the area, but a single analysis would be combined for the entire nonattainment area to satisfy conformity requirements for each MPO's transportation plan/TIP.

Alternatively, the regional emissions analysis could be completed by showing that the emissions in each analysis year for the entire nonattainment area meet the applicable interim emissions test(s) (Option 2). The MPOs in the area would work together to carry out a regional emissions analysis for the entire nonattainment area that includes all of their transportation plans and TIPs. Again, these modeling results would be presented in one regional emissions analysis for the entire nonattainment area that would accompany each transportation plan/TIP conformity determination.

For example, suppose there are multiple MPOs within a nonattainment area and they are demonstrating conformity using the build/no-build test. If each MPO has its own travel demand model and prefers to run its own analysis, all MPOs must choose the same analysis years. The analysis must show either that each MPO passes its own build/no-build test; or the "build" scenarios and the "no-build" scenarios from each MPO must be aggregated, and the total "build" emissions from all MPOs must be less than the total "no-build" emissions from all MPOs. Alternatively, the MPOs could coordinate in creating one regional emissions analysis for the entire nonattainment area that meets the build/no-build test.

2.4.2 One or More MPOs and a Donut Area

If there is only one MPO in the nonattainment area conducting conformity determinations and a donut area exists, the conformity rule requires the MPO to include the emissions estimated from the donut area in the regional emissions analysis for the MPO's transportation plan and TIP conformity determinations. However, either the MPO or the state DOT could estimate emissions from the donut area as decided through interagency consultation. See below for details.

If there is more than one MPO as well as a donut area in a nonattainment area, the MPOs must work together and with the state DOT, as appropriate, to create one regional emissions analysis

for the entire nonattainment area that would accompany each transportation plan/TIP conformity determination. The emissions estimated from the entire area must meet the interim emissions test or tests, according to the requirements of 40 CFR 93.119. Again, the interagency consultation process would be used to coordinate the choice of tests (as applicable) and analysis years when several agencies are completing emissions analyses, because the same tests and analysis years must be used as noted above.

If a project-level conformity determination is required for a new project in a donut area, the project would first need to be included in the associated MPO's transportation plan and TIP's conformity determination (including the regional emissions analysis) before the project-level conformity determination can proceed. There must be a currently conforming transportation plan and TIP at the time of project approval,⁴ and for each MPO, only one transportation plan or TIP conformity determination (including the regional emissions analysis) may exist at any time (40 CFR 93.114). See Section 3.7 for when a donut area can operate independently from an adjacent MPO(s) for project approvals.

Note that in the preamble to the November 24, 1993 final rule (58 FR 62207-62208), EPA described another option that EPA no longer believes is viable, and therefore, this option is not included in this guidance. The option was described in the preamble to the 1993 rule as follows: a new regional emissions analysis (separate from that completed for the MPO's transportation plan and TIP) could be completed that hypothetically assumed a new donut area project would be added to the transportation plan and TIP, and the combination of emissions would be tested to see if it would satisfy all the conformity criteria for transportation plans and TIPs. EPA indicated in the preamble to the 1993 rule that this approach was not preferred, and that it would be better to include the project in the regional emissions analysis. Since the 1993 rule, this option has not been used, and as a result MPO transportation plan and TIP conformity determinations have been able to meet 40 CFR 93.114. The hypothetical analysis approach described in the 1993 rule preamble would effectively lead to having two separate regional emissions analyses for the same transportation plan and TIP – a hypothetical one that includes the donut project and an actual one that does not comply with this requirement of the conformity rule. This clarification in today's guidance on this option continues to implement the conformity rule consistent with past practice.

2.4.3 Coordinating Transportation Plan and TIP Update and Amendment Cycles among MPOs

All MPOs must use the same test and the same analysis years for the regional emissions analysis regardless of whether each MPO creates an analysis for its geographic area which is then aggregated, or the MPOs coordinate to create one analysis. MPOs in the same nonattainment area may want to coordinate their transportation plan and TIP update cycles as well as the timeframe of the conformity determination, as described below:

- Updated transportation plans and TIPs or amendments that include non-exempt projects, require a new conformity determination and may require a new regional emissions

⁴ Except during the lapse grace period, when a project can come from the most recent conforming transportation plan and TIP (or regional emissions analysis). Refer to Section 3.6.2.

analysis (see 40 CFR 93.104 and 93.122(g)). When one of the MPOs in the area wants to update its transportation plan or TIP or make an amendment that includes one or more non-exempt projects, the other MPOs can rely on their portion of a previous regional emissions analysis for the conformity determination provided that they meet the criteria in 40 CFR 93.122(g).⁵ Coordination of transportation plan and TIP update and amendment cycles among MPOs in the same nonattainment area may minimize the number of new regional emissions analyses and conformity determinations that have to be completed.

- Where one of the MPOs in the multi-jurisdictional area wants to update its transportation plan and TIP or make an amendment that includes one or more non-exempt projects, the public involvement requirements of 40 CFR 93.105(e) of the conformity rule would apply for all MPOs, including a public comment period on all MPO transportation plan/TIP conformity determinations. However, the requirements under DOT's transportation planning requirements (23 CFR 450.316(b)) would not apply in this situation (including the requirement to hold a public hearing) for any MPOs that are not updating or amending their transportation plans or TIPs.
- MPOs may have to analyze additional years if the timeframes of their conformity determinations differ. According to 40 CFR 93.119(g), an analysis must be performed for the last year of the timeframe of the conformity determination (generally, the last year of the transportation plan's forecast period).⁶ For example, if one MPO's transportation plan forecast period ends in 2035 and another MPO's transportation plan forecast period ends in 2040, both years would have to be analyzed in the regional emissions analysis for the entire nonattainment area. Coordination of transportation plan forecast periods may minimize the number of analysis years that have to be examined in any one regional emissions analysis.

2.5 What decisions must be made in the interagency consultation process?

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

- Timing of individual plan and TIP conformity determinations, so that DOT can make its conformity determinations for all transportation plans and TIPs in a nonattainment area at the same time;

⁵ This provision allows a conformity determination to be made without a new regional emissions analysis if the previous regional emissions analysis still applies. Please refer to the conformity regulation for more information.

⁶ The timeframe of a conformity determination could be shortened per 40 CFR 93.106(d).

- How the regional emissions analysis is developed, e.g., whether emissions will be modeled for each MPO's jurisdiction separately and summed together, or modeled for the nonattainment area as a whole;⁷
- The interim emissions test that will be used in nonattainment areas that have a choice of interim emissions test.⁸

EPA believes that for consistency and in order to satisfy the requirements of the conformity rule, the same test must be used in all portions of the nonattainment area in areas that have the choice of interim emissions tests for a given conformity determination. In other words, it would not be acceptable for one MPO to use the build/no-build test and another MPO within the same nonattainment area to use the baseline year test, because 40 CFR 93.119 and 93.124(d) require that one test be met for the entire nonattainment area where only one test is required.

The same test would be required to be used for each analysis year for a given conformity determination as well. EPA believes that sufficient flexibility exists without using different interim emissions tests for different analysis years within one conformity determination, which is unnecessarily complicated and may indicate that an area would not conform using one test consistently.

- The analysis years that will be used for the interim emissions test(s), as required by 40 CFR 93.119(g).

Again, EPA believes that analysis years must be consistent in all portions of the nonattainment area, even if emissions are modeled for each MPO's jurisdiction separately; otherwise, they cannot be summed together to produce a complete analysis to satisfy the test. Regional emissions analyses for all MPOs must cover the same time period and thus need to include the last year of each transportation plan or conformity determination as an analysis year.

For example, if the last year of one MPO's transportation plan is 2035 and the last year of another MPO's transportation plan is 2040, the regional emissions analyses for both MPOs must examine emissions in the years 2035 and 2040.⁹

- Who will analyze emissions for any donut area that is part of the nonattainment area? As mentioned above, any of the MPOs, the state DOT, or a local planning agency could

⁷ Please note that there may be different travel activity models and methods used among MPOs and/or donut areas in a multi-jurisdictional area. Such differences between jurisdictions are acceptable as long as each MPO/donut area is using the latest models and methods available and 40 CFR 93.122 requirements are met.

⁸ Areas that have a choice of interim emissions tests include: Marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to reasonable further progress requirements of CAA section 182(b)(1), moderate CO areas with a design value less than 12.7 ppm, PM_{2.5} areas, PM₁₀ areas and NO₂ areas. In ozone areas classified moderate or higher, serious CO, and moderate CO areas with a design value greater than 12.7 ppm, both interim emissions tests must be met under 40 CFR 93.119.

⁹ Assuming neither has elected to shorten the timeframe of the conformity determination (40 CFR 93.106(d)).

estimate emissions from the donut area as decided through interagency consultation. See Section 1.6 for details.

- The emissions model to be used for the interim emissions test(s), in the case where there is more than one emissions model that could be used (e.g., during a new model grace period) (40 CFR 93.111).

In addition, the MPOs involved in the conformity determination(s) for the nonattainment area should discuss the planning assumptions they will use in the regional emissions analysis and the sources of that information. The conformity regulation at 40 CFR 93.105(c)(1)(i) specifically requires that planning assumptions be discussed in the interagency consultation process. Where feasible and appropriate, MPOs (and where applicable, state DOTs) should use consistent planning assumptions for the regional emissions analysis in their jurisdictions.

2.6 If one MPO in the area can meet the requirements of 40 CFR 93.119, but another MPO or a donut area cannot, can the MPO that meets the requirements show that its transportation plan and TIP conform and proceed?

No. Before a multi-jurisdictional nonattainment area has budgets, conformity must be demonstrated for the nonattainment area as a whole in order to meet CAA section 176(c)(1) requirements that transportation activities will not:

- cause or contribute to a new air quality violation(s);
- increase the frequency or severity of any existing violation of any standard in any area; or
- delay timely attainment of the NAAQS or any required interim milestones.

It is necessary to estimate emissions from the entire nonattainment area in all transportation plan/TIP conformity determinations and the supporting regional emissions analysis because separate budgets are not available. For example, in Figure 2.1 below, there are two MPOs: West MPO and East MPO.

Figure 2.1: A Nonattainment or Maintenance Area with Two MPOs



If they choose to model their emissions separately and West MPO appears to pass the applicable test(s) of 40 CFR 93.119 but East MPO does not, West MPO cannot proceed to determine conformity alone. Since East MPO does not pass the test, it is not known for certain that West MPO's transportation plan and TIP will not cause a new violation, worsen an existing violation, or delay timely attainment in the nonattainment area. Therefore, the nonattainment area as a whole in this example, cannot demonstrate that transportation activities will not worsen air quality or will not delay timely attainment.

To resolve this situation, East and West MPOs would consult on what options are available for demonstrating conformity, including the option to add or model their emissions together to see if they pass the applicable regional emissions test(s).

Section 3: Conformity Determinations and Regional Emissions Analyses with SIP Budgets for the Relevant NAAQS

General

3.1 What does this section of the guidance cover?

Section 3 of this guidance applies to areas designated nonattainment or maintenance for a NAAQS that have an adequate or approved budget for that NAAQS (the relevant NAAQS).

3.2 How do nonattainment and maintenance areas determine conformity for a given NAAQS once budgets are available for that NAAQS?

CAA section 176(c)(1) states that federal activities must conform to the SIP. Once a SIP with budgets has been submitted and EPA finds those budgets adequate or approves the SIP, the budget test using these budgets must be used for conformity according to 40 CFR 93.109(c)(1) and 93.118. For example, once a 2006 PM_{2.5} NAAQS area has budgets for the 2006 PM_{2.5} NAAQS, it would use those budgets for the budget test as the regional test of conformity for the 2006 PM_{2.5} NAAQS.

EPA's adequacy finding or approval means that the SIP's budgets are an appropriate measure for whether transportation activities conform due to many factors, including:

- The budgets are identified and precisely quantified;
- The budgets are consistent with the SIP's purpose of reasonable further progress (RFP), attainment, or maintenance of a NAAQS; and
- The budgets are consistent with and clearly related to the emissions inventory and the control measures in the SIP.¹⁰

For a listing of SIP submissions with budgets that are currently under EPA adequacy review or that EPA has found adequate or inadequate for conformity purposes, please visit the EPA's website at: www.epa.gov/otaq/stateresources/transconf/adequacy.htm.

¹⁰ There are other criteria that budgets must meet for EPA to find them adequate; for the full list of adequacy criteria, see 40 CFR 93.118(e)(4).

3.3 What geographic areas might budgets from a SIP cover, and how is conformity generally determined in multi-jurisdictional areas with budgets?

State and local agencies can develop SIPs in many different ways. In a multi-jurisdictional nonattainment or maintenance area located entirely within one state, the state air agency may develop a SIP that establishes either:

- Budgets that cover the entire nonattainment or maintenance area, or
- Subarea budgets that cover each MPO or county (or donut area) within the nonattainment or maintenance area.

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

- Identical budgets that cover the entire nonattainment or maintenance area, or
- Unique budgets that cover only each state's portion of the nonattainment or maintenance area.

The conformity rule at 40 CFR 93.124(d) describes how conformity requirements are met in multi-jurisdictional areas:

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

Once budgets have been found adequate or the SIP containing budgets is approved, the conformity determination(s) and regional emissions analysis are done for the geographic area that is addressed by the budgets in the SIP. This general principle applies in all situations, although there is flexibility for developing the regional emissions analysis and coordinating conformity determinations, when several MPOs are involved. Table 3.1 summarizes the general situations.

Summary Table 3.1: How SIPs Affect Geographic Areas Considered in Transportation Conformity

For a nonattainment or maintenance area located:	Where SIP budgets are established for:	The geographic area considered in regional emissions analyses is:	The geographic area considered in final conformity determination(s) is:
Within one state	The entire area	The entire area*	The entire area**
Within one state	Subareas	Each subarea	Each subarea
In multiple states	The entire area	The entire area*	The entire area**
In multiple states	Each state	Each state	Each state

* There is flexibility in how the regional emissions analysis is conducted when there is more than one MPO. See Section 3.4 for details.

** There may be more than one transportation plan/TIP conformity determination in a nonattainment or maintenance area because there may be more than one MPO making conformity determinations for separate transportation plans and TIPs. There is flexibility in how these conformity determinations are coordinated. See Section 3.4 for details.

The questions and answers that follow in this section provide further detail on the different circumstances that can occur.

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

3.4 How is conformity demonstrated when budgets are established for an entire nonattainment or maintenance area that is within one state?

This section explains how conformity is demonstrated in a nonattainment or maintenance area that is located in a single state, where the SIP establishes one budget for the entire area and there is more than one MPO responsible for transportation planning in the area and/or there is a donut area.

3.4.1 More than One MPO

When budgets are established for the nonattainment or maintenance area as a whole, and there is more than one MPO, the MPOs would complete their respective transportation plan/TIP conformity determinations and submit them to DOT, as explained below. Once all conformity determinations for a given area are received, DOT would make its conformity determinations at the same time. The MPOs must collectively develop a regional emissions analysis for the entire area that meets the requirements of 40 CFR 93.118 and 93.122 that would accompany all transportation plan/TIP conformity determinations. For example, all MPOs would have to use the same analysis years for the regional emissions analysis. Each MPO would show conformity of its transportation plan and TIP using the regional emissions analysis done for the entire area.

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

1. Each MPO can model emissions for its geographic part of the nonattainment or maintenance area separately. For each analysis year, the emissions estimated by each MPO would be summed together and compared to the area's applicable budgets. The MPOs must all use the same analysis years when completing the budget test, in accordance with 40 CFR 93.118.
2. The MPOs could also work together to model the entire nonattainment or maintenance area as a whole at the same time. In this case, 40 CFR 93.118 requirements would be met if estimated emissions in each analysis year are less than or equal to the area's applicable budgets.

3.4.2 One or More MPOs and a Donut Area

If there is one MPO in the nonattainment or maintenance area conducting a conformity determination, the MPO must include the emissions estimated from the donut area's existing and proposed transportation system in the regional emissions analysis for the transportation plan and TIP conformity determinations (40 CFR 93.118(d)). However, either the MPO or the state DOT could estimate emissions from the donut area as decided through interagency consultation. See Section 1.6 for details.

If there is more than one MPO as well as a donut area in a nonattainment or maintenance area, the MPOs must work together and with the state DOT or other donut area agency as appropriate to create one regional emissions analysis for the entire area that would accompany all transportation plan/TIP conformity determinations (40 CFR 93.124(d)). The regional emissions analysis would include estimated emissions associated with the transportation plan and TIP as well as emissions associated with the donut area(s), if any. The emissions estimated from the entire area must be less than or equal to the budget(s) established for the entire area (40 CFR 93.118). The interagency consultation process would be used to coordinate the analysis years when several agencies are completing regional emissions analyses, because the same analysis years must be used.

If a project-level conformity determination is required for a new project in a donut area, the project would first need to be included in the associated MPO's transportation plan and TIP's conformity determination (including the regional emissions analysis) before the project-level conformity determination can proceed. For each MPO, there must be a currently conforming transportation plan and TIP that meet the MPO's subarea budgets at the time of any project approval,¹¹ and for each MPO, only one conforming transportation plan or TIP (and regional emissions analysis) may exist at any time (40 CFR 93.114).¹² See Section 3.7 for when a donut area can operate independently from an adjacent MPO(s) for project approvals.

3.4.3 Coordinating Transportation Plan and TIP Update and Amendment Cycles among MPOs

When budgets are established for the entire area and where one MPO updates or amends its transportation plan and TIP with a non-exempt project, a DOT conformity determination must be made at the same time for all MPO transportation plans and TIPs in that nonattainment or maintenance area. This is the case even though the other MPOs in the area may not be updating or amending their respective transportation plans or TIPs (40 CFR 93.124(d)). Therefore, MPOs in this situation may want to coordinate their transportation plan and TIP update cycles and the timeframe of their transportation plans:

- Updated transportation plans and TIPs or amendments that include non-exempt projects require a new conformity determination and may require a new regional emissions analysis (see 40 CFR 93.104 and 93.122(g)). Where one of the MPOs in the area wants to update its transportation plan or TIP or make an amendment that includes one or more non-exempt projects, the other MPOs can rely on their portion of a previous regional emissions analysis for the conformity determination provided that they meet the criteria in 40 CFR 93.122(g).¹³ Coordination of transportation plan and TIP update and

¹¹ Except during the lapse grace period, where a project could come from the most recent conforming transportation plan and TIP (or regional emissions analysis). Refer to Section 3.6.2.

¹² As described in Section 2.4.2, EPA believes that there are no other options available before donut area projects can proceed in cases where an MPO's transportation plan and TIP conformity determination and regional emissions analysis covers a donut area. Separate regional emissions analyses for donut areas would be inconsistent with 40 CFR 93.114.

¹³ This provision allows a conformity determination to be made without a new regional emissions analysis if the previous regional emissions analysis still applies. Please refer to 40 CFR 93.122(g) for more information.

amendment cycles among MPOs in the same nonattainment or maintenance area may minimize the number of new regional emissions analyses and conformity determinations that have to be completed.

- Where one of the MPOs in the multi-jurisdictional area wants to update its transportation plan and TIP or make an amendment that includes one or more non-exempt projects, the public involvement requirements of 40 CFR 93.105(e) of the conformity rule would apply for all MPOs, including a public comment period on all MPO transportation plan/TIP conformity determinations. However, the requirements under DOT's transportation planning requirements (23 CFR 450.316(b)) would not apply in this situation (including the requirement to hold a public hearing) for any MPOs that are not updating or amending their transportation plans and TIPs.
- MPOs may have to analyze additional years if the timeframes of their conformity determinations differ. According to 40 CFR 93.118(d)(2), an analysis must be performed for the last year of the timeframe of the conformity determination (generally, the last year of the transportation plan's forecast period).¹⁴ For example, in a nonattainment area in which one MPO's transportation plan ends in 2035 and another MPO's transportation plan ends in 2040, both years would have to be analyzed in the regional emissions analysis for the entire nonattainment area. Coordination of the transportation plan lengths or timeframe for the conformity determinations may minimize the number of analysis years that have to be examined in any one regional emissions analysis.

Nonattainment or Maintenance Areas Located in One State, Where the SIP Establishes Subarea Budgets

3.5 How is conformity demonstrated when there is more than one MPO in a single state and the SIP establishes subarea budgets for each MPO?

When subarea budgets are created for each MPO, the sum of the subarea budgets equals the total amount of emissions the area can have from the on-road mobile source sector and still meet the CAA purpose of the SIP for reasonable further progress, attainment, or maintenance. Therefore, if each MPO meets its subarea budget(s) for a pollutant and NAAQS in accordance with 40 CFR 93.118, then the entire area meets the SIP's purpose for that pollutant and NAAQS. As EPA noted in the January 11, 1993 conformity proposal:

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

¹⁴ The timeframe of a conformity determination could be shortened per 40 CFR 93.106(d).

When the SIP for an area establishes subarea budgets for conformity purposes, these subarea budgets must be met for transportation plans and TIPs in the area to conform, as required by 40 CFR 93.124(c):

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

The MPOs can make independent conformity determinations for their transportation plans and TIPs as long as all of the other subareas in the nonattainment or maintenance area have conforming transportation plans and TIPs in place at the time of each MPO’s and DOT’s conformity determination. The preamble to the November 24, 1993 conformity final rule explains this as follows:

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

Thus, when any subarea demonstrates conformity, all subareas within the nonattainment area must have conforming transportation plans and TIPs.

For example, suppose the subarea budgets in a SIP have been found adequate, and one of the MPOs for the nonattainment area needs to update its TIP. That MPO can demonstrate conformity using its subarea budgets without waiting for the other MPOs in the nonattainment area to demonstrate conformity using their subarea budgets, as long as the other MPOs have conforming transportation plans and TIPs in place, even if these transportation plans and TIPs were previously found to conform using the interim emissions test(s).

The SIP must specifically state that it creates subarea budgets. County-by-county emissions projections in a SIP inventory are not subarea budgets unless they are specifically labeled as such. If county level emissions projections are included in a SIP but not explicitly defined as subarea budgets for the purposes of conformity, the SIP is considered to have budgets for the entire area and MPOs must work together to have transportation plan/TIP conformity determinations for the entire nonattainment or maintenance area approved by DOT at the same time, as described in Sections 3.4, 3.9, 4.8, 4.11, 4.13 and 4.18.

If MPOs within one nonattainment or maintenance area would prefer to have subarea budgets, they would need to communicate their preference to the state and local air agencies during the

development of the SIP. The conformity rule at 40 CFR 93.105 requires interagency consultation on the development of SIPs, as well as transportation plans, TIPs and conformity determinations.

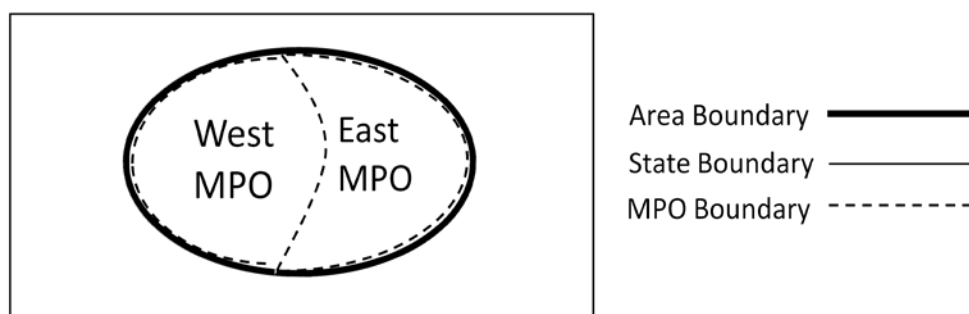
3.6 Can an MPO that has its own subarea budgets determine conformity of its transportation plan and/or TIP when another MPO in the same area is in a conformity lapse or conformity lapse grace period?

3.6.1 Conformity Lapse

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

If an individual MPO's transportation plan lapses, it has not demonstrated that it can conform to its subarea budget(s). Therefore, there is no way for the other MPOs in the same area to know whether their transportation plans and TIPs are consistent with the SIP either. Using Figure 3.2 below as an example, if East MPO is in a conformity lapse, it cannot be assured that West MPO's transportation activities will meet the purpose of the SIP, even if West MPO meets its subarea budgets.

Figure 3.2: A Nonattainment or Maintenance Area with Two MPOs, in a Single State



That is, it is unknown whether the total amount of emissions in the area from the planned transportation sector would still meet the CAA requirements of the SIP, because East MPO cannot meet its subarea budgets. When one subarea lapses, there is no way for the other MPO to show that their planned transportation activities would conform to the SIP for the whole area until the lapse is resolved.

If conformity lapses for one MPO's subarea, the other MPO(s) in the area can continue to implement projects in their currently conforming transportation plans and TIPs, but they cannot make new transportation plan and TIP conformity determinations until a conformity

determination has been made for the subarea that is in a conformity lapse. In other words, if the conformity status of one subarea lapses, the existing conforming transportation plan and TIPs in other subareas continue to be valid, but they cannot adopt new transportation plans, TIPs, or plan/TIP amendments that contain non-exempt projects. Therefore, the MPOs should work to resolve the lapse in one subarea before the other subareas need to make new transportation plan/TIP conformity determinations.

3.6.2 Conformity Lapse Grace Period

CAA Section 176(c)(9) and 40 CFR 93.104(f) provide a 12-month grace period before a conformity lapse occurs in certain situations. During the lapse grace period, a conformity lapse has not yet occurred. Therefore, if one MPO in a multi-MPO area with subarea budgets enters a lapse grace period, the other MPOs that are not in the lapse grace period can proceed with additional conformity determinations for their transportation plans, TIPs, and projects as long as conformity requirements in those MPOs are met.

For the MPO that is in the conformity lapse grace period, project-level conformity determinations can continue to be made. The regulation at 40 CFR 93.104(f) allows projects to be found to conform during the lapse grace period as long as they were included in either the currently conforming transportation plan and TIP (or regional emissions analysis) or the most recent conforming transportation plan and TIP (or regional emissions analysis) and other project-level conformity requirements are met. However, if an MPO's TIP has expired, that MPO could not meet DOT's transportation planning requirements. See 73 FR 4423-4424 (January 24, 2008) for additional details about the conformity lapse grace period.

If an MPO in a multi-MPO area enters the one-year conformity lapse grace period and does not make a transportation plan and TIP conformity determination by the end of the one year, conformity for that MPO would lapse, and all other MPOs would also be affected. Refer to Section 3.6.1 above for information in this situation.

3.7 Can a subarea budget be established for a donut area?

Yes. While the subarea budget provisions of the conformity rule at 40 CFR 93.124(c) and (d) specifically address MPOs, the conformity rule does not explicitly prohibit donut areas from having subarea budgets. Therefore, EPA has determined that subarea budgets may be established for donut areas.

If this option is chosen, in addition to the MPO(s) determining conformity to their respective transportation plans and TIPs every four years, the interagency consultation process must ensure that conformity is demonstrated to any subarea budget for a donut area at least every four years as well. In the event that an MPO or donut area cannot demonstrate conformity on a four-year cycle, the other subareas may not complete a conformity determination until all subareas conform. Note that donut areas are not isolated rural areas. Therefore, conformity for donut areas must be determined according to the frequency requirements in 40 CFR 93.104.

3.8 If a SIP establishes only subarea budgets, do MPOs have the option to use either an area-wide SIP budget or subarea budgets?

No, not unless the SIP establishes both an overall area budget and subarea budgets, and the SIP specifically allows either the area-wide budget or subarea budgets to be used for conformity purposes. Specifically, the SIP would need to explicitly state which budget or budgets the MPOs would initially use and what must occur if the MPOs want to switch to the other type of budget(s). Further, the SIP must clearly explain this flexibility and provide a clear process for implementing it.

MPOs will have to make the switch in a way that meets the conformity rule's requirements under 40 CFR 93.124. That is:

- If the MPOs want to switch to using the area-wide budget, the MPOs must all agree to do so and from that point forward, they must make conformity determinations collectively.
- If the MPOs want to switch to using subarea budgets, then they must all agree, and they must all demonstrate conformity to their own subarea budgets at the same time. Once that occurs and DOT makes its conformity determination on all the MPO transportation plans and TIPs, the MPOs may act separately again.

For more information about establishing both area-wide and subarea budgets, please contact the EPA regional office. See Section 1.2 for contact information.

Multi-State Nonattainment or Maintenance Areas

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

If a multi-state area has a SIP that contains budgets for the multi-state area as a whole, one regional emissions analysis would be completed for the entire area using the budget test, according to the requirements in 40 CFR 93.118.

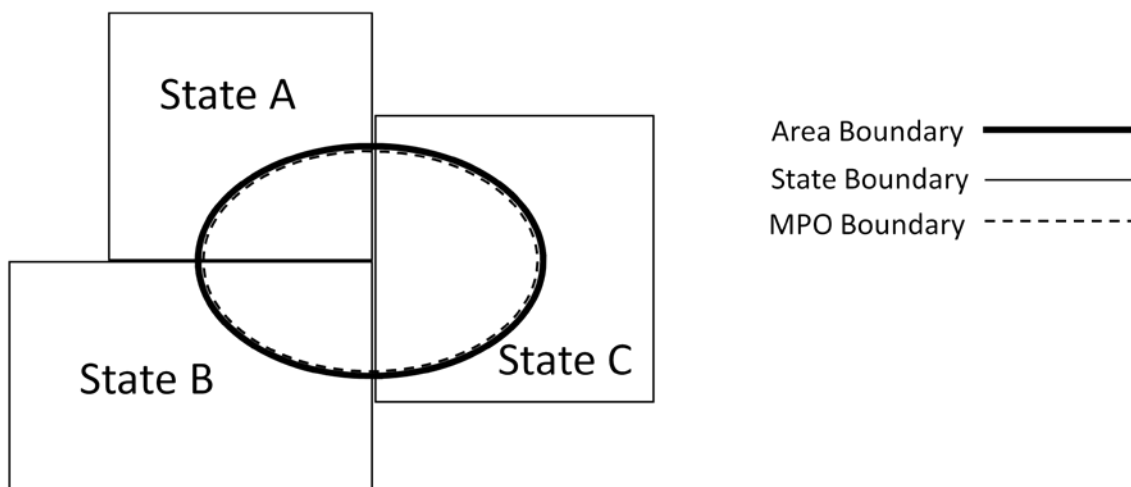
- If just one MPO is involved as in Figure 3.3 below, it would complete the regional emissions analysis for the entire multi-state area and submit it to DOT with its transportation plan and TIP conformity determination.
- If more than one MPO is involved, the MPOs must collectively develop a regional emissions analysis for the entire area that meets the requirements of 40 CFR 93.118 and 93.122 that would accompany all transportation plan and TIP conformity determinations.

Once all determinations for a given area are submitted, DOT would make its conformity determinations at the same time. In the second case, all MPOs would have to use the same

analysis years for the regional emissions analysis. Each MPO would show conformity of its transportation plan and TIP using the regional emissions analysis done for the entire area.

For example, in Figure 3.3 below, suppose there is one budget for the multi-state area, but each state has its own MPO.

Figure 3.3: A Multi-state Nonattainment or Maintenance Area with One MPO



In this case, one regional emissions analysis would be made for the entire area and the conformity determinations for each MPO's transportation plan and TIP within the area would be based on this regional emissions analysis. Any donut area emissions would also be included in the regional emissions analysis for the area. DOT would not make its conformity determinations for the transportation plans and TIPs until it receives the conformity determinations from all of the MPOs in the area. This is similar to single state areas with SIP budgets that cover the entire nonattainment or maintenance area. See Sections 3.4, 4.8, 4.11, 4.13, and 4.18 for further information.

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

This option would most likely be chosen in areas where there is one MPO responsible for transportation planning of the entire multi-state nonattainment or maintenance area. However, the option is available to any multi-state nonattainment or maintenance area. In areas with more than one MPO, additional coordination would be necessary for transportation plan and TIP conformity determinations and the regional emissions analysis because they would need to cover the entire nonattainment or maintenance area pursuant to 40 CFR 93.118 and 93.124(d).

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

States in a multi-state area have the option of submitting SIPs with budgets for just their own portion of the area that, when taken together, meet the applicable CAA requirement. Where states have done so and EPA has found such budgets adequate or approved the SIP containing the budgets, the MPO or MPOs in each state with such budgets can determine conformity completely independently of the other states.¹⁵

EPA concluded that states can operate independently for conformity because the CAA refers to conformity to a SIP. Each state's RFP plan, attainment demonstration, or maintenance plan includes inventories, control measures and programs, and budgets that apply to only that state's portion of the nonattainment or maintenance area.

3.12 How is conformity determined for a multi-state nonattainment or maintenance areas when one state has a budget for a NAAQS and the other state(s) does not have budgets for that pollutant?

A SIP budget must be used for conformity once EPA finds the budget adequate or approves the SIP. Consistent with CAA section 176(c), once a state in a multi-state nonattainment or maintenance area has an adequate or approved budget, it can determine conformity completely independently of the other states. This is the case even if it is the only state in the nonattainment or maintenance area that has such a budget.

If the area is a two-state area, and one state has a budget(s), then MPOs (with any applicable donut areas) in both states can determine conformity on their own:

- The MPO(s) in the state with the budget(s) would use it to determine conformity for the area covered by the budget;
- The MPO in the state without a budget(s) would use the interim emissions test(s), as applicable (see 40 CFR 93.119) for that state's portion of the area.

However, if the multi-state area is a three-state area and only one state has a budget(s), only the MPO(s) in the state with the budget(s) could determine conformity on its own. The MPOs in the other two states would determine conformity for that NAAQS together, using the interim emissions test(s).

¹⁵ For example, this is the case even when one state has a maintenance plan for a NAAQS and the other state(s) have budgets for another type of SIP for that pollutant.

Section 4: Conformity Determinations and Regional Emissions Analyses with SIP Budgets for Another NAAQS of the Same Pollutant

4.1 To what areas does this section of the guidance apply?

This section of the guidance applies to areas that are determining conformity for a relevant NAAQS that do not have a budget for that NAAQS but have a budget for another NAAQS of the same pollutant (another NAAQS).¹⁶ Conformity tests for these areas are covered by 40 CFR 93.109(c)(2).

For example, an area designated nonattainment for the 2006 PM_{2.5} NAAQS that does not have adequate or approved budgets for that NAAQS but has budgets for the 1997 PM_{2.5} NAAQS would be covered by this section of the guidance.

Once the area submits a SIP that contains a budget for the NAAQS for which it is designated nonattainment and for which conformity requirements apply (relevant NAAQS), and EPA finds the budget adequate or approves the SIP that contains it, the area must use it for conformity for that NAAQS (40 CFR 93.109(c)). When that occurs, this section of the guidance no longer applies; readers should consult Section 3 of this guidance.

General

4.2 What scenarios could result when determining conformity for a NAAQS using a budget from another NAAQS of the same pollutant?

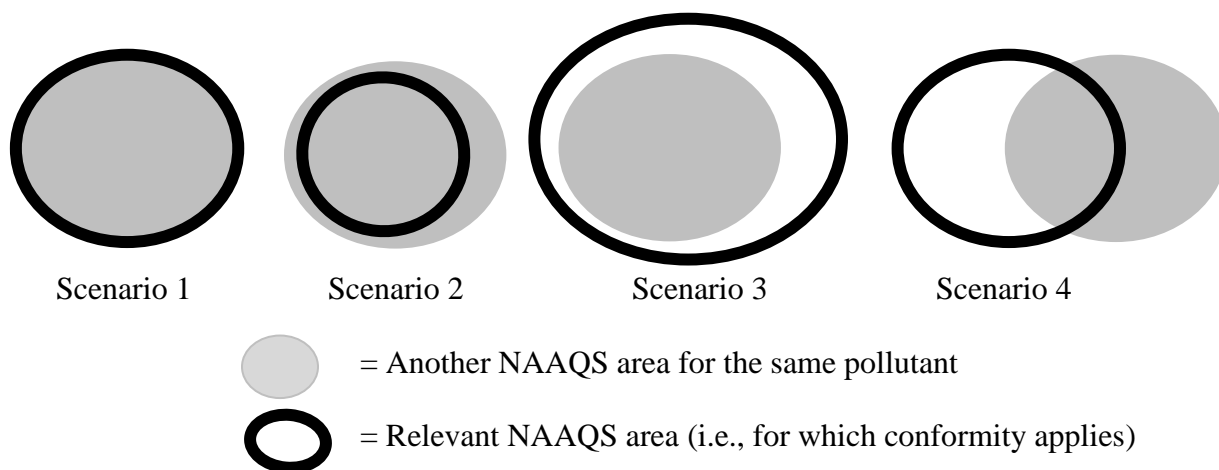
As described in the Conformity Restructuring rule (77 FR 14979), there are four generic scenarios for how an area's boundaries for the relevant NAAQS relate to boundaries covered by budgets for another NAAQS of the same pollutant. The conformity rule is written with these four scenarios in mind.

To determine which scenario describes an area, it is necessary to consider the boundary of the entire area designated for the relevant NAAQS. For example, in a multi-state 2006 PM_{2.5} area, the 2006 PM_{2.5} area nonattainment boundary refers to the entire multi-state area, rather than each state's individual portion.

Figure 4.1 below illustrates the four generic boundary scenarios.

¹⁶ A precursor budget for one pollutant cannot be used as the test of conformity for any other pollutant. If, for example, an area has an approved 1997 ozone attainment demonstration with a NO_x budget, this NO_x budget must be used to demonstrate conformity for the 1997 ozone NAAQS and would also be used to demonstrate conformity for any future ozone NAAQS before the area has a budget for it. However, this ozone SIP NO_x budget could not be used to demonstrate conformity for a PM or NO₂ NAAQS because doing so would not be consistent with the Clean Air Act. See the Conformity Restructuring rule (77 FR 14979) for details.

Figure 4.1: The Four Boundary Scenarios



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

It is possible that, in any scenario, the boundary of the relevant NAAQS could include portions of one or more areas designated for another NAAQS. For example, a Scenario 1 area could be formed from two areas designated for another NAAQS. In these cases, the interagency consultation process should be used to determine how the budgets from another NAAQS will apply. The information below covers further details on all of the scenarios.

4.3 What are the general test requirements for regional emissions analyses for these areas?

In general, if an area does not have budgets for the relevant NAAQS but has budgets from another NAAQS of the same pollutant, 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)).

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 ozone, EPA believes the court's holding is relevant for other pollutants 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.

This requirement also applies when areas have subarea budgets for another NAAQS of the same pollutant. Where subarea budgets exist for another NAAQS, MPOs must use them to demonstrate conformity for the relevant NAAQS until they have budgets for the relevant NAAQS. In general, each subarea can determine conformity independently as long as they are using subarea budgets for another NAAQS and other applicable tests to determine conformity. See Section 4.14 for details. See also Section 3 of this guidance for further information on conformity determinations using subarea budgets.

4.4 How is the budget test generally implemented in areas that do not have a budget for the relevant NAAQS but have a budget for another NAAQS of the same pollutant?

The budget test requirements in 40 CFR 93.118 for relevant NAAQS areas with a budget for another NAAQS of the same pollutant will generally be implemented in the same manner as the budget test for another NAAQS. First, as described above, the geographic area covered by the relevant NAAQS may be different than that covered by the other NAAQS of the same pollutant in some cases. Second, the years for which the regional emissions analysis is required (i.e., analysis years) may differ.

Areas that use budgets from another NAAQS for their relevant NAAQS conformity determinations will need to determine the modeling analysis years that apply for the relevant NAAQS per 40 CFR 93.118(d)(2). Under this section, a regional emissions analysis for the budget test must be performed for:

- the attainment year, 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.

The attainment year analysis is to be for an area's attainment year for the relevant NAAQS, and not the attainment year for the other NAAQS of the same pollutant. The area must calculate emissions in the analysis years from the planned transportation system, and compare them to the budget. Emissions projected for each analysis year must be within the budget for the most recent prior year. Interpolation can be used between analysis years for demonstrating consistency with budgets. Refer to 40 CFR 93.118 for specific details.

For example, consider an area designated nonattainment for the 2006 PM_{2.5} NAAQS which has an attainment year of 2014. The boundary for the 2006 PM_{2.5} area and the 1997 PM_{2.5} area are exactly the same (a Scenario 1 area), and 1997 annual PM_{2.5} budgets cover all of the 2006 24-hour PM_{2.5} area. The 1997 PM_{2.5} budgets are for the years 2009 and 2014 (the RFP year and the

attainment year, respectively.) This 2006 PM_{2.5} area must use the 1997 PM_{2.5} budgets to determine conformity for the 2006 PM_{2.5} NAAQS.

Suppose the 2006 PM_{2.5} NAAQS area is demonstrating conformity in the year 2012 for a transportation plan that covers the years 2012 through 2035 and has not elected to shorten the timeframe of the conformity determination per 40 CFR 93.106(d)(2). This area would examine the following analysis years in its 2006 PM_{2.5} NAAQS conformity determination:

- 2014, which fulfills the 40 CFR 93.118(d)(2) requirement to analyze the 2006 PM_{2.5} attainment year,
- 2020 and 2030, which fulfills the 40 CFR 93.118(d)(2) requirement to analyze an intermediate year so that analysis years are no more than 10 years apart; and
- 2035, which fulfills the requirement in 40 CFR 93.118(d)(2) requirement to analyze the last year of the transportation plan/timeframe of the conformity determination.

In addition, the conformity rule at 40 CFR 93.111(b) requires that the 2006 PM_{2.5} area must also demonstrate consistency with the 1997 PM_{2.5} budgets for the year 2014. Note that, in this example, because there is no analysis year required prior to 2014 and the year 2009 is no longer within the timeframe of the conformity determination, the budget for 2009 does not need to be assessed.

In the example, the budget test would then be satisfied as follows:

- 2014: budget test, using the 2014 budgets
- 2020: budget test, using the 2014 budgets
- 2030: budget test, using the 2014 budgets
- 2035: budget test, using the 2014 budgets

EPA notes that under 40 CFR 93.118(d)(2), interpolating between analysis years can be used to demonstrate consistency with budgets in some cases. However, this was not necessary in this example.

As stated earlier, once adequate or approved budgets are established for the 2006 PM_{2.5} NAAQS, the budget test would be completed using only those budgets, rather than budgets for the 1997 PM_{2.5} NAAQS.

Note 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 have to be used for analysis years that are earlier than the budget year. For example, suppose there is a 2008 ozone NAAQS 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. The EPA regional office is available to discuss what analysis years apply in different situations. See contact information in Section 1.2.

4.5 Where relevant NAAQS areas have to use both the budget test and the interim emissions test(s), what analysis years must be chosen?

As described in the March 24, 2010 and July 1, 2004 final rules (75 FR 14260 and 69 FR 40004, respectively), there will be cases in Scenario 3 or 4 areas where both the budget and interim emissions tests are used.¹⁷ In cases where both the budget and interim emissions tests are used, the interagency consultation process can be used to choose analysis years that meet the requirements of both 40 CFR 93.118 and 93.119 so that the number of analysis years is minimized.

In the budget test, the years that must be analyzed (40 CFR 93.118(d)(2)) are:

- the attainment year, 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.

In the interim emissions tests, the years that must be analyzed (40 CFR 93.119(g)) 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 no more than ten years apart.

For example, consider an area designated nonattainment and classified as moderate for the 2008 ozone NAAQS that is larger than and encompasses the area covered by the 1997 ozone budgets (i.e., budgets for NO_x and VOC). The area's attainment year for the 2008 ozone NAAQS is 2018. The 1997 ozone budgets are for the years 2007 and 2009 (the RFP year and the attainment year for moderate 1997 ozone areas). Per 40 CFR 93.109(c)(2)(iii)(A), this area is going to use both the budget and interim emissions tests to determine conformity for the 2008 ozone NAAQS.¹⁸

Suppose this 2008 ozone NAAQS area is demonstrating conformity in the year 2012 for a transportation plan that covers the years 2012 through 2035 and has not elected to shorten the timeframe of the conformity determination per 40 CFR 93.106(d)(2). This area would examine the following analysis years in its 2008 ozone NAAQS conformity determination:

- 2018, which fulfills the 40 CFR 93.118(d)(2) requirement to analyze the attainment year for areas classified moderate under the 2008 ozone NAAQS,
- 2015 and 2025, which fulfill the 40 CFR 93.119(g) requirement to analyze a year not more than five years beyond the year in which the conformity determination is being made (2015, in this example), and the requirement in both rule sections to analyze an intermediate year so that analysis years are no more than 10 years apart (2015 and 2025 in this example), and

¹⁷See Section 4.2 for details on various boundary scenarios.

¹⁸The conformity rule at 93.109(c)(2)(iii)(B) provides the option to use the budget test as the sole test for conformity for a Scenario 3 area; however, the Scenario 3 area in this example will be using both the budget and interim emissions tests to determine conformity for the 2008 ozone NAAQS.

- 2035, which fulfills the requirement in both rule sections to analyze the last year of the transportation plan/timeframe of the conformity determination.

In addition, the conformity rule requires that the portion of the area covered by the 1997 ozone budgets must also demonstrate consistency in the years budgets are established. However, in this example, because the years 2007 and 2009 are no longer within the timeframe of the conformity determination, and an analysis year is not chosen before 2015, consistency with the budgets for 2007 and 2009 does not need to be demonstrated.

In the example, the regional conformity test requirements would then be satisfied as follows:

- 2015: budget test (using 2014 budgets) and interim emissions tests (40 CFR 93.119(b)(1))
- 2018: budget test (using 2014 budgets) and interim emissions tests (40 CFR 93.119(b)(1))
- 2025: budget test (using 2014 budgets) and interim emissions tests (40 CFR 93.119(b)(1))
- 2035: budget test (using 2014 budgets) and interim emissions tests (40 CFR 93.119(b)(1))

As described in 40 CFR 93.109(c)(2)(iii)(A), the regional emissions analysis for the budget test in this Scenario 3 area example would cover the portion of the nonattainment area covered by the 1997 ozone budgets. The regional emissions analyses for the interim emissions test(s) in a multi-state area would cover the portion of the state's 2008 ozone area not covered by the 1997 ozone budgets.

As stated earlier, once adequate or approved budgets are established for the 2008 ozone NAAQS, the budget test would be completed using only those budgets, rather than by using budgets for the 1997 ozone NAAQS and the interim emissions tests.

4.6 In an area that has subarea budgets for another NAAQS of the same pollutant, how should MPOs demonstrate conformity for the first time under the relevant NAAQS and for subsequent conformity determinations?

As described in Section 3 of this guidance, when a nonattainment or maintenance area has subarea budgets, conformity for an MPO's transportation plan and TIP can be determined only if all other subareas have conforming transportation plans and TIPs in place for a given pollutant and NAAQS. This requirement applies also to cases where MPOs are demonstrating conformity for the first time using subarea budgets for another NAAQS of the same pollutant.

In general, EPA and DOT believe it is necessary for the first conformity determination under the relevant NAAQS to be performed as follows: each MPO would demonstrate conformity of its transportation plan and TIP to the relevant NAAQS using the subarea budgets for another 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 relevant NAAQS until every MPO in the area has made a conformity determination for its transportation plan and TIP. Please note that this answer may differ for Scenario 3 and 4 areas where an additional portion of the relevant NAAQS area is not covered by budgets for another NAAQS. See below for details.

All MPOs must have an initial valid conformity determination for the relevant 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 relevant NAAQS, and all of the MPOs' transportation plans and TIPs in the area will lapse.

In general, once DOT has made its initial conformity determination for the area, the MPOs will operate as usual: before any MPO in the area determines conformity, all other MPOs in the area must have a conforming transportation plan and TIP in place for the relevant NAAQS. If one subarea is in a conformity lapse, conformity determinations for new or revised transportation plans and TIPs cannot be made in other subareas until the lapse ends.

4.7 How would conformity be demonstrated in multi-state areas where each state has its own budget for another NAAQS of the same pollutant?

Where a state has an adequate or approved budget for another NAAQS of the same pollutant for its portion of the nonattainment area, the MPOs in the state would determine conformity independently from MPOs in the other states, including the initial conformity determination. The MPO in that state's portion of the area must use such budget(s) to demonstrate conformity for the relevant NAAQS.

For example, in the case where a multi-state area is designated nonattainment for the 2006 PM_{2.5} NAAQS and all the states have adequate or approved 1997 PM_{2.5} NAAQS budgets for their portion of the 2006 PM_{2.5} area, the MPO(s) in each state can each demonstrate conformity independently of the other MPOs in the other states. The MPOs would use 1997 PM_{2.5} NAAQS budgets for the 2006 PM_{2.5} NAAQS until they have adequate or approved 2006 PM_{2.5} NAAQS budgets.

In another example of a two-state area, if only one of the states has a budget for another NAAQS of the same pollutant, then MPOs in both states can determine conformity independently:

- The MPO in the state with the budget for another NAAQS would continue to use it for the relevant NAAQS; and
- The MPO in the state without such a budget would use the interim emissions test(s).

However, if the area is a three-state area and only one state had budgets from another NAAQS, only the MPO in the state with the budgets could determine conformity on its own. MPOs in the other two states would determine conformity for the relevant NAAQS together using the interim emissions test(s).

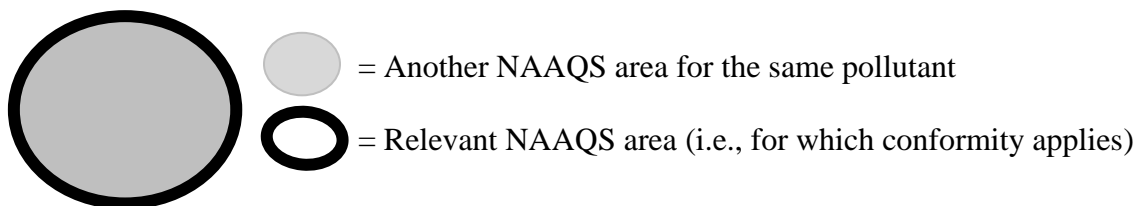
If the MPO in one of the states cannot demonstrate conformity at the end of the one-year grace period under 40 CFR 93.102(d), the MPO(s) in the other state(s) in the nonattainment area can continue to make conformity determinations. This is because, where they have their own SIP and budgets, the states operate independently for conformity purposes.

EPA notes, however, that in Scenario 3 and 4 areas, the circumstances are more complex. In those cases, budgets for another NAAQS may not be the sole test of conformity for a state's portion of the relevant NAAQS area since the conformity determination must include a regional emissions analysis that includes the entire relevant NAAQS area. See below for how this applies to the various boundary scenarios.

See Section 3 of this guidance for further details on conformity determinations using multi-state budgets.

Scenario 1 Areas

As described in Section 4.2, the boundary for the Scenario 1 area designated for the relevant NAAQS is identical to the boundary for the area designated for another NAAQS of the same pollutant:



4.8 How is conformity demonstrated in Scenario 1 areas where one budget (or one set of budgets) apply for the entire area?

Conformity determinations are straightforward in Scenario 1 areas, because the area boundaries for the relevant NAAQS area and another NAAQS area are exactly the same. Where the area is covered by more than one MPO, they must coordinate their transportation plan/TIP conformity determinations and submit them to DOT. Once DOT receives all transportation plan/TIP conformity determinations for the relevant NAAQS, DOT will make its conformity determinations at the same time. Further, the planning agencies will have to work together to develop one regional emissions analysis for the relevant NAAQS per 40 CFR 93.109(c)(2)(i), just as they would when determining conformity in the past. See Section 3.4 and 3.9 of this guidance for further information regarding how a regional emissions analysis could be completed for these areas.

4.9 How is conformity demonstrated in a Scenario 1 area when subarea budgets have been established?

As discussed in Section 3.2 of this guidance, conformity follows the SIP. Therefore, when budgets to be used for conformity are subarea budgets from another NAAQS of the same pollutant, conformity determinations and the supporting regional emissions analyses for the relevant NAAQS area are done using these subarea budgets. See Sections 3.5 through 3.8 for additional information.

4.10 How is conformity demonstrated in multi-state Scenario 1 areas, where each state has its own budget?

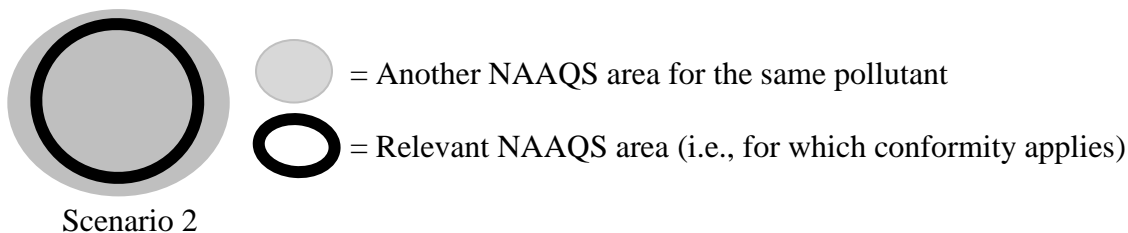
As discussed in Section 3.3, conformity and the supporting regional emissions analysis are done for the geographic area that is covered by the SIP's budgets, i.e., each state's portion of the nonattainment area.

An MPO in a state with a budget for another NAAQS of the same pollutant can determine conformity for the relevant NAAQS independent of MPOs in the other states. This is true whether the other state or states do not have budgets and must use the interim emissions test(s), or the MPOs in the other state or states in the area are in a conformity lapse, or the MPOs in the other state or states have not yet determined conformity for the relevant NAAQS.

Please see Sections 3.11 and 3.12 of this guidance for further information regarding how a regional emissions analysis could be completed for these areas.

Scenario 2 Areas

As described in Section 4.2, the boundary for the Scenario 2 area designated for the relevant NAAQS is smaller than and completely within the area designated for another NAAQS of the same pollutant:



4.11 How is conformity demonstrated in a Scenario 2 area, when the budget applies to the entire area for the relevant NAAQS?

In a Scenario 2 area, the relevant NAAQS area is smaller than and completely encompassed by an area designated for another NAAQS of the same pollutant. In this situation, one of the following options must be met for the relevant NAAQS area:

- The budget test using the subset or portion of the budget for the other NAAQS that applies to the relevant NAAQS area, where such portion(s) can be reasonably identified (40 CFR 93.109(c)(2)(ii)(A)).

For example, a three-county area designated for the relevant NAAQS is entirely within a four-county area that has a budget for another NAAQS, and the SIP identified emissions by county. In this case, the portion of that other NAAQS budget that applies to the relevant NAAQS area can be identified, so it could be used to demonstrate conformity for the relevant NAAQS;

OR

- The budget test using the budget for another NAAQS of the same pollutant for the entire area designated for that other NAAQS. In this case, any additional emissions reductions beyond those addressed by control measures in the SIP for that other NAAQS would be required to come from the relevant NAAQS area (40 CFR 93.109(c)(2)(ii)(B)).

For example, in the case of the three-county area, the four-county area's budget for another NAAQS could be used for the four-county area (i.e., the area designated for that other NAAQS) to demonstrate conformity for the three-county area (i.e., the relevant NAAQS area). Any reductions needed would have to come from within the three-county area.

The interagency consultation process must be used to determine which of these options will be used. Through interagency consultation, it can be determined whether using a portion of the budgets covered by another NAAQS is feasible and, if so, how deriving such a portion would be accomplished. It may be possible to create budgets for only the relevant NAAQS area, for example if the budget contains estimates of emissions by county, and emissions from the county or counties not included in the relevant NAAQS area can be subtracted.

Areas that can identify that portion of the budget(s) that applies to the relevant NAAQS area could choose to use either option each time they make a conformity determination. For any particular conformity determination, however, the same choice would have to be used for each analysis year. EPA believes that to do otherwise would be unnecessarily complicated and may indicate that one option used consistently for all analysis years would not demonstrate conformity.

The MPO or MPOs must coordinate transportation plan/TIP conformity determinations and submit them to DOT. Once DOT receives all transportation plan/TIP conformity determinations, DOT will make its conformity determinations at the same time.

If it is not possible to determine what portion of the budget for another NAAQS applies to the relevant NAAQS area, the MPO or MPOs will have to determine conformity for the area covered by the budget for another NAAQS, and if reductions are needed to meet the budgets, they must come from within the relevant NAAQS area as required by 40 CFR 93.109(c)(2)(ii)(B).

4.12 How is conformity demonstrated in multi-state Scenario 2 areas, where each state has its own budget?

As discussed in Section 3.3, conformity is determined for the geographic area that is covered by the SIP's budgets, i.e., each state's portion of the nonattainment area.

For Scenario 2 areas, the MPO in each state can choose either of two options for the budget test for its portion of the relevant NAAQS area:

- The budget test using the subset or portion of the budget for another NAAQS of the same pollutant that covers the relevant NAAQS area within that state, where such portion(s) can reasonably be identified (40 CFR 93.109(c)(2)(ii)(A));

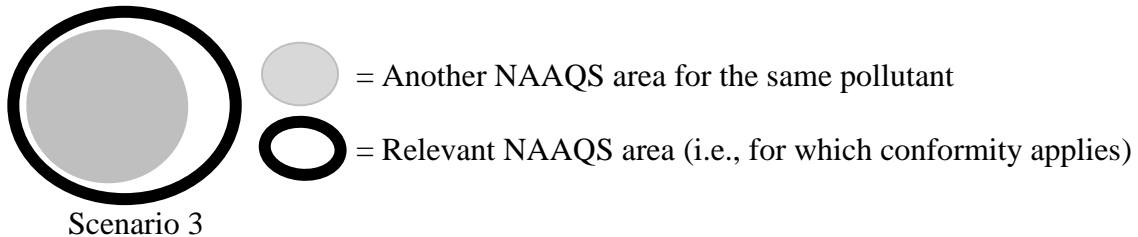
OR

- The budget test using the budget for another NAAQS of the same pollutant for the entire area covered by that budget within the state. In this case, if additional emissions reductions are necessary to meet the budget test, these emissions reductions must come from within that state's portion of the relevant NAAQS area (40 CFR 93.109(c)(2)(ii)(B)).

Consistent with Section 4.11, the interagency consultation process must be used to determine which of these options will be used.

Scenario 3 Areas

As described in Section 4.2, the boundary for the Scenario 3 area designated for the relevant NAAQS is larger than and contains the area designated for another NAAQS of the same pollutant:



Scenario 3 Areas within One State

4.13 How is conformity demonstrated in a Scenario 3 area located entirely within one state?

In this case, the nonattainment area for the relevant NAAQS covers a larger geographic area and encompasses an entire area for another NAAQS of the same pollutant. In this situation, conformity for the relevant NAAQS is determined by meeting either 40 CFR 93.109(c)(2)(iii)(A) or (B):

- (A) The budget test using the budgets for another NAAQS of the same pollutant for the portion of the relevant NAAQS area that it covers AND the interim emissions test(s) for:
- The remaining portion of the relevant NAAQS area; or
 - The entire relevant NAAQS area

OR

- (B) The budget test using the budget(s) for another NAAQS of the same pollutant for the entire relevant NAAQS area.

If the MPOs choose an option that requires the use of an interim emissions test, once they select a particular interim emissions test and the geographic area it will address, the same test must be used consistently for all analysis years. The interagency consultation process must be used to determine which analysis years should be selected for regional emissions analyses where the budget test and interim emissions tests are used. It may be possible to choose analysis years that satisfy both the budget and interim emissions test(s) requirements if both tests are used. See Section 4.5 for more information.

If the relevant NAAQS area includes a donut area, the interagency consultation partners must decide which agency will be responsible for the donut area regional emissions analysis. See Section 1.6 for details.

4.14 How is conformity demonstrated in a Scenario 3 area located entirely within one state, when subarea budgets apply?

As described in Sections 3.5 through 3.8 and in Sections 4.3, 4.6 and 4.9, each MPO can develop its own regional emissions analysis and conformity determination for its transportation plan and TIP, as long as all of the other MPOs in the area have a conforming transportation plan and TIP for the relevant NAAQS in place. The unique aspect in a Scenario 3 area is that there is a portion of the relevant NAAQS area that is not covered by the subarea budgets for another NAAQS of the same pollutant. For this portion of the relevant NAAQS area, a regional emissions analysis using the interim emissions test(s) must be done, and this regional emissions analysis can be done for either:

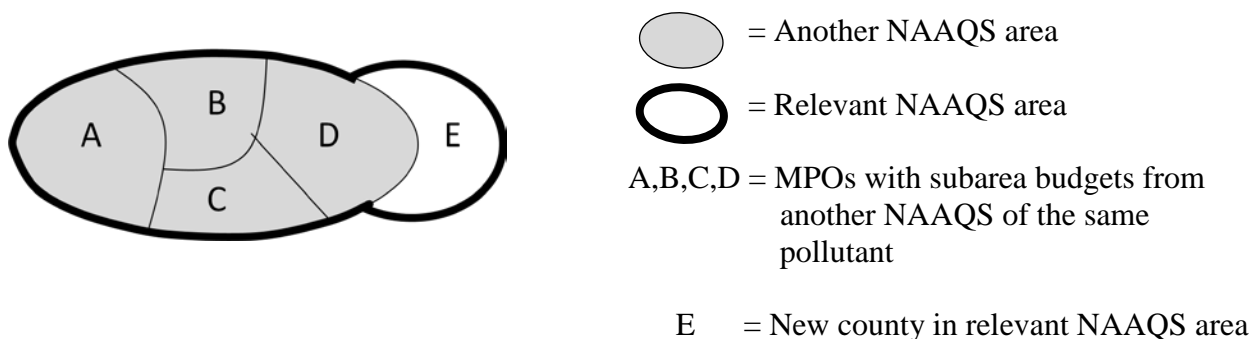
- The part of the relevant NAAQS area not covered by the subarea budgets for another NAAQS of the same pollutant,

OR

- The entire relevant NAAQS area.

As addressed in Section 4.6, for the initial conformity determination under the relevant NAAQS, each MPO can determine conformity for its own transportation plan and TIP, including any donut portion of the area where applicable, and DOT will make its conformity determination for all MPOs at the same time.

Figure 4.2: A Scenario 3 Area within One State with Subarea Budgets from Another NAAQS of the Same Pollutant



In Figure 4.2 above, MPOs A, B, C, and D can develop conformity determinations for the relevant NAAQS for just their own transportation plans and TIPs using their subarea budgets for another NAAQS of the same pollutant. The regional emissions analysis for Part E must be done using the interim emissions test(s). Part E may be a donut area or may have its own MPO. If Part E is a donut area, the parties involved in interagency consultation must discuss which MPO will be responsible for Part E's emissions, and for what geographic area the regional emissions analysis will be done (either just Part E, or the entire area A through E). See Sections 1.6 and 3.5 through 3.8 for details.

Once an area selects a particular interim emissions test and the geographic area it will address, the same test must be used consistently for all analysis years. The consultation process must be used to determine which analysis years should be selected for regional emissions analyses where the budget test and interim emissions test(s) are used. It may be possible to choose analysis years that satisfy both the budget and interim emissions test(s) requirements. See Section 4.5 for more information.

Scenario 3 Multi-State Areas

4.15 How is conformity demonstrated in a multi-state Scenario 3 area, where all the states have their own budgets?

As described above, conformity determinations can be made independently in any state that has its own budget(s). In addition, there are several options for completing the regional emissions analysis if the relevant NAAQS area within a state is larger than the area covered by another NAAQS of the same pollutant:

Option 1: The budget test for each state's portion of the relevant NAAQS area covered by the budget(s) AND the interim emissions test(s) for either:

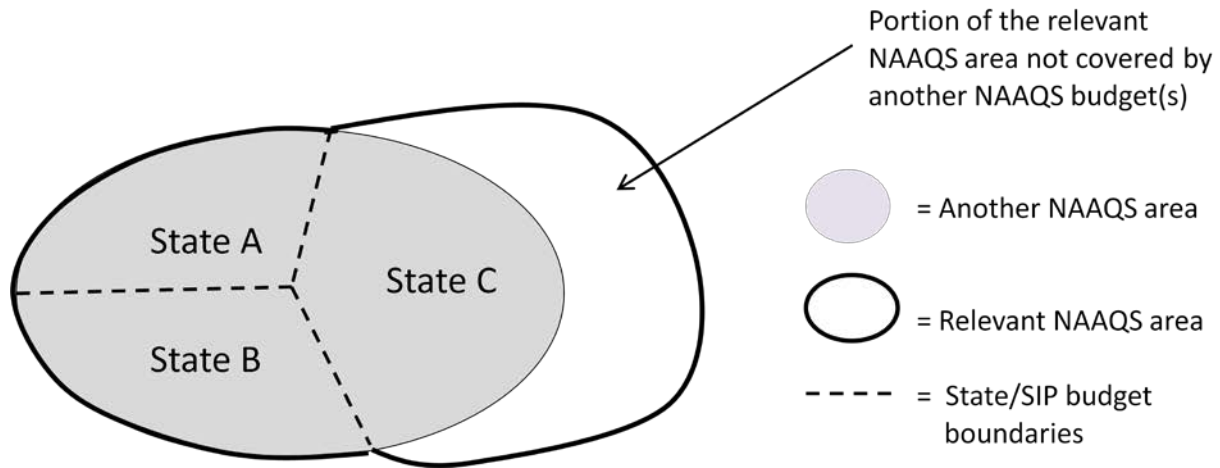
- the portion of the relevant NAAQS area within that state that is not covered by the budget(s),
- that state's entire portion of the relevant NAAQS area; or
- the entire multi-state area for the relevant NAAQS.

For Scenario 3 areas, any of these approaches could be implemented under 40 CFR 93.109(c)(2)(iii)(A).

Option 2: The budget test for the entire relevant NAAQS area using the budget(s) for another NAAQS of the same pollutant (40 CFR 93.109(c)(2)(iii)(B)).

For example, in Figure 4.3 below, an area designated for a relevant NAAQS includes parts of three states, and the boundary in States A and B is unchanged from the area covered by the budgets, but the boundary in State C is larger.

Figure 4.3: A Multi-State Scenario 3 Area



States A, B, and C can continue to determine conformity independently from one another for the relevant NAAQS. MPOs in States A and B would determine conformity for their own portions of the relevant NAAQS area using their respective budgets for another NAAQS of the same pollutant.

The MPO in State C could choose to determine conformity for its portion of the relevant NAAQS area as follows:

Option 1: The budget test using the budget(s) for another NAAQS for the geographic area covered by such budgets, plus the interim emissions test(s) for either one of the following:

- the portion of the relevant NAAQS area in State C not covered by budget(s) (white portion of Figure 4.3);
- the entire portion of the relevant NAAQS area that lies within State C (gray and white within State C portion of Figure 4.3) ; or
- the entire multi-state relevant NAAQS area (all of Figure 4.3).

OR

Option 2: Using its budget(s) for another NAAQS for the budget test, the entire portion of the relevant NAAQS area in State C (including that portion of the relevant NAAQS area that lies within State C that is not covered by another NAAQS budget).

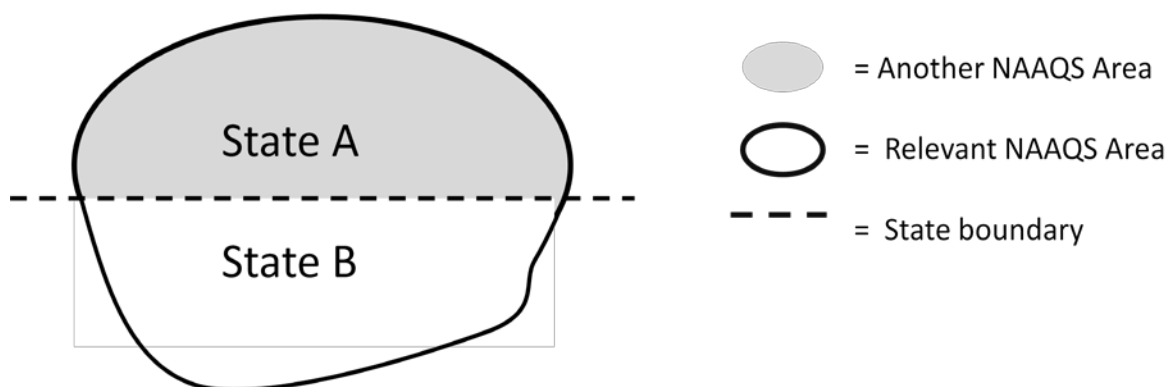
4.16 How is the regional emissions analysis done in multi-state Scenario 3 areas, where only one of the states has its own budget(s)?

As discussed elsewhere in this guidance, if one state has a budget(s) for another NAAQS of the same pollutant and the relevant NAAQS area is comprised of two states, then MPOs in both states can determine conformity on their own:

- The MPOs in the state with the budget would use it to demonstrate conformity for its portion of the relevant NAAQS area.
- The MPOs in the state without a budget would use the interim emissions test(s).

In Figure 4.4 below, the MPOs in each state can determine conformity for its own portion of the relevant NAAQS area, even though State B does not have any budget for that pollutant.

Figure 4.4: A Two-State Scenario 3 Area



However, if the relevant NAAQS area is a three-state area and only one state has a budget for another NAAQS of the same pollutant, only the MPO in the state with the budget would determine conformity on its own. MPOs in the other two states would determine conformity for the relevant NAAQS together using the interim emissions test(s). See Section 2 for guidance on determining conformity using the interim emissions test(s).

Scenario 3 - General

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

The interagency consultation process is of key importance in these areas. Because the boundary of the relevant NAAQS area is larger than the area covered by the budget(s) for another NAAQS, one or more planning agencies previously not involved in conformity may become part

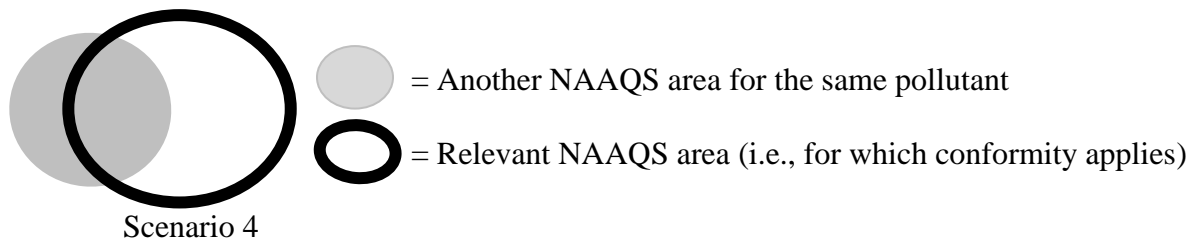
of the interagency process. These planning agencies need to be included in the decision-making process for the area.

Through the interagency consultation process (40 CFR 93.105), the involved parties must decide:

- whether it is more appropriate for the state DOT or an MPO to prepare the regional emissions analysis for a donut area, if there is one;
- which interim emissions test will be used, in areas that can select only one test;
- analysis years for the budget test and interim emissions test(s) when both are used. It may be possible to choose analysis years that satisfy both the budget and interim emissions test requirements in 40 CFR 93.118(d)(2) and 93.119(g); and
- whether the relevant NAAQS area can meet the budget(s) without the interim emission test. Scenario 3 areas may be able to demonstrate conformity without an interim emissions test if the entire relevant NAAQS area can meet the budget for another NAAQS of the same pollutant and if not, what portion of the area the interim emissions test(s) will cover.

Scenario 4 Areas

As described in Section 4.2, the boundary for the Scenario 4 area designated for the relevant NAAQS overlaps with a portion of the area designated for another NAAQS of the same pollutant:



Scenario 4 Areas within One State

4.18 How is conformity demonstrated in a Scenario 4 area, when one budget applies for the entire area rather than subarea budgets?

In a Scenario 4 area, the boundaries partially overlap for the relevant NAAQS area and the area designated by another NAAQS of the same pollutant. Unlike Scenario 3 areas, the relevant NAAQS area does not contain the entire area designated for another NAAQS. Therefore, the budgets cannot be the sole test of conformity for the relevant NAAQS, since a conformity determination must include a regional emissions analysis that includes the entire relevant NAAQS area.

In this scenario, conformity for the relevant NAAQS is determined with the budget test using the budgets for another NAAQS for the portion of the relevant NAAQS area that the budget covers, AND the interim emissions test(s) for:

- the remaining portion of the relevant NAAQS area, (i.e., the portion not covered by the budgets),

OR

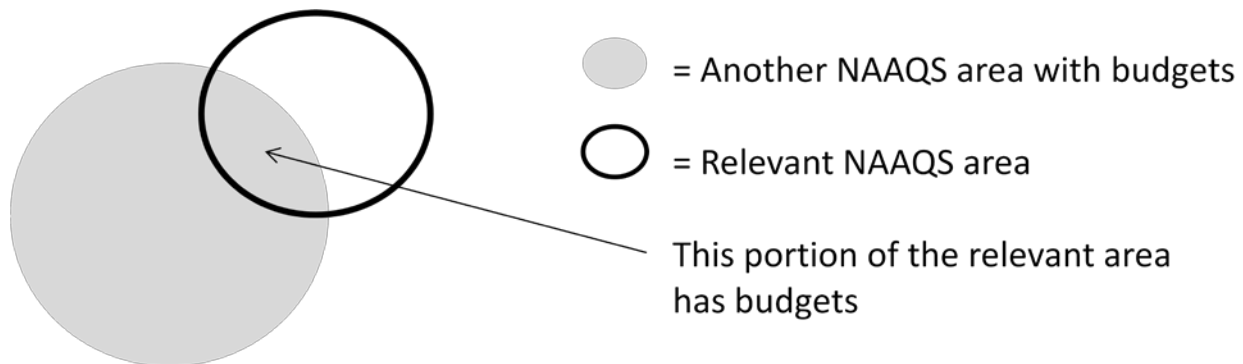
- the entire relevant NAAQS area (40 CFR 93.109(c)(2)(iv)).

If the relevant NAAQS area includes a donut area, the interagency consultation partners must decide which agency will be responsible for the donut area regional emissions analysis. See Section 1.6 for details.

Similar to Scenario 3 areas, the same test and geographic portion of the relevant NAAQS area must be used consistently for all analysis years.

For example, in Figure 4.5 below, a relevant NAAQS area partially overlaps an area designated nonattainment previously for another NAAQS of the same pollutant.

Figure 4.5: A Scenario 4 Area within One State



In this example, the conformity determination for the relevant NAAQS area would be completed using:

- The budget test, for that portion of the relevant NAAQS area covered by the budget (as indicated by the arrow in Figure 4.5),

AND

- The interim emissions test for either:

- The part of the relevant NAAQS area not covered by the budget(s) for another NAAQS of the same pollutant – in Figure 4.5, the white portion inside the bolded circle,
OR
- The entire relevant NAAQS area (the entire area inside the bolded circle).

Scenario 4 Multi-State Areas

4.19 How does a multi-state Scenario 4 area determine conformity, when each state has its own budget(s)?

Multi-state Scenario 4 areas are a unique case. Where each state has its own budget(s) for another NAAQS of the same pollutant that applies only to its portion of the relevant NAAQS area, MPOs in each state can determine conformity for the relevant NAAQS independently. Where the budget for another NAAQS can be reasonably identified through the interagency consultation process, it must be used (40 CFR 93.109(c)(2)(iv)). In addition, any portion of a state's area not covered by those budgets would have to be included in an interim emissions test(s), for

- that part of the relevant NAAQS area not covered by the budget;
- the state's entire portion of the relevant NAAQS area;
OR
- the entire relevant NAAQS area.

The interagency consultation process would be used to determine which test option is selected in Scenario 4 areas. Once an area selects a particular interim emissions test and the geographic area it will address, the same test must be used consistently for all analysis years.

4.20 How is the regional emissions analysis done in a multi-state Scenario 4 area, where only one of the states has its own budget?

The conformity rule requires that if any state has a budget(s), that budget must be used and therefore the state would determine conformity independently from the other states in the relevant NAAQS area (40 CFR 93.109(c)(2)(iv)). The state or states that have budgets for another NAAQS of the same pollutant would use them or portions of them for their regional emissions analyses and conformity determinations for the relevant NAAQS area. The state or states without those budgets would use the interim emissions test(s) for conformity in the relevant NAAQS area and, in the case where two or more states do not have budgets, they would determine conformity together. See Section 2 for guidance on determining conformity using the interim emissions test(s).

Scenario 4 - General

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

The interagency consultation process is also of key importance in Scenario 4 areas. Where a relevant NAAQS area partially covers an area designated for another NAAQS of the same pollutant, one or more MPOs may no longer have to determine conformity and one or more new MPOs may become part of the interagency consultation process. All MPOs in the relevant NAAQS area as well as the other parties involved in interagency consultation need to be involved in the decision-making process for the area.

Through the interagency consultation process (40 CFR 93.105), the involved parties must decide:

- whether to apply the interim emissions test(s) to the entire relevant NAAQS area (or in a multi-state area, to one state's portion of the area) or to just the portion not covered by a budget for another NAAQS of the same pollutant;
- whether it is more appropriate for the state DOT or an MPO to prepare the regional emissions analysis for a donut area, if there is one;
- which interim emissions test will be used, in areas that can select only one test; and
- analysis years for the budget test and interim emissions test(s). It may be possible to choose analysis years that satisfy both the budget and interim emissions test requirements in 40 CFR 93.118(d) and 93.119(g).