

control strategy SIPs to use one of the following three tests to complete conformity:

- The interim emissions tests, as described above;
- The budget test using the adequate or approved motor vehicle emissions budgets in a submitted 8-hour ozone SIP; or
- The budget test using the motor vehicle emissions level in the most recent year of clean data as budgets, if the state or local air quality agency requests that budgets be established by EPA's clean data rulemaking for the 8-hour ozone standard.

The proposed regulatory text for these options is in § 93.109(d)(5).

This part of the proposal would be provided to moderate and above ozone areas with three years of clean data for the 8-hour ozone standard that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act's reasonable further progress and attainment demonstration requirements. In addition, some subpart 1 areas would also be covered by this conformity proposal if such areas are required to submit control strategy SIPs, as proposed in the June 2003 ozone implementation rule. Please note that EPA's proposed clean data SIP policy and therefore today's conformity proposal might not be used by any area for the first conformity determination, since newly designated nonattainment areas may not yet have three years of clean data for the 8-hour ozone standard.

4. General Implementation of Regional Tests

The proposal also retains the existing rule's general requirement that regional emissions analyses for ozone areas must address ozone precursors, which are nitrogen oxides (NO_x) and volatile organic compounds (VOCs) (40 CFR 93.102(b)(2)(i)). All proposed interim emissions test options would be required to address both VOC and NO_x precursors, unless EPA determines that additional reductions of NO_x would not contribute to attainment for the 8-hour ozone standard and issues a NO_x waiver under Clean Air Act section 182(f). This is consistent with the current conformity rule, although the proposal moves these provisions to § 93.119(f) due to reorganization of § 93.119. Finally, the proposal retains the current

rule's provision that the interim emissions test(s) be completed for NO_x if a reasonable further progress SIP is submitted with only a budget for VOCs (e.g., a 15% SIP). See § 93.109(d)(3) for this proposed regulatory text.

The consultation process should be used to determine the models and assumptions for completing either the interim emissions tests or the budget test, as required by § 93.105(c)(1)(i) of the current rule. See the proposed regulatory text in § 93.109(d) for a general overview of when the budget test and interim emissions tests would apply in 8-hour ozone nonattainment areas without 1-hour ozone SIP budgets.

B. Why Are We Proposing These Options?

EPA has been told by some stakeholders that it is reasonable and credible to provide 8-hour ozone areas with the same flexibility that applies under the 1-hour ozone standard. To that end, EPA has proposed that 8-hour ozone areas with fewer SIP requirements (e.g., marginal and subpart 1 areas) continue to have the choice offered by the current rule between the baseline year and build/no-build tests. EPA gave this choice to 1-hour ozone areas as described in the preamble to a previous proposal (July 9, 1996, 61 FR 36116–36117). EPA continues to believe that allowing these areas a choice of conformity tests during the time period before adequate or approved 8-hour ozone SIP budgets are in place is environmentally protective and meets the statutory requirements.

As noted above, we are also considering three options for moderate and above ozone areas to ensure that every flexibility is provided to new 8-hour ozone areas while achieving environmental benefits. Please see EPA's rationale for these proposed options in Section IV.D.2.

EPA is also responding to stakeholder requests that the rule continue to provide more choices to areas that would qualify for EPA's proposed 8-hour ozone clean data policy. If the proposed clean data policy is included in the final 8-hour ozone implementation rule, EPA proposes to also include the proposed conformity options for such areas in the final conformity rule for the new standards. See EPA's previous discussion and rationale for the clean data options from the preamble to the 1996 proposal and

1997 final rules (July 9, 1996, 61 FR 36116; and August 15, 1997, 62 FR 43784–43785, respectively).

VI. Regional Conformity Tests in 8-Hour Ozone Areas That Have 1-Hour Ozone SIPs

A. What Are We Proposing?

EPA is proposing several options for completing regional emissions analyses in 8-hour ozone areas that have an existing 1-hour ozone SIP that covers either some or all of the 8-hour ozone nonattainment area.

1. Conformity After 8-Hour Ozone SIP Budgets Are Adequate or Approved

Once a SIP for the 8-hour ozone standard is submitted with budget(s) that EPA has found adequate or approved, the budget test would be used to complete the regional emissions analysis. The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (e.g., rate-of-progress SIP or attainment demonstration). The first SIP could also be submitted earlier and demonstrate a significant level of emission reductions from the current level of emissions, as described in Section V.A.1. Interim emissions tests and/or any existing 1-hour ozone SIP budgets (as described below) would no longer be used for conformity for either NO_x or VOCs once an adequate or approved 8-hour ozone SIP is established for such a precursor. State, local, and Federal air quality and transportation agencies should consult on the development of 8-hour ozone SIPs as appropriate.

2. Conformity Before 8-Hour Ozone SIP Budgets Are Adequate or Approved

The following paragraphs outline the options for determining conformity before adequate or approved 8-hour ozone SIP budgets are in place in 8-hour ozone areas with existing 1-hour ozone SIP budgets. EPA is proposing that these 8-hour ozone areas be able to select one test option from among a menu of test options for completing the regional emissions analysis requirement, rather than be required to complete a specific test(s).

Summary of Options: The following table summarizes the menu of proposed options, based on the placement of 1-hour and 8-hour ozone nonattainment boundaries:

Boundary scenario	Menu of options	Proposed regulatory text
8-hour area = 1-hour area	Interim emissions test(s) OR	§ 93.109(e)(2)(i) OR
	Budget test using 1-hour budget(s)	§ 93.109(e)(2)(ii)(A).
8-hour area < 1-hour area	Interim emissions test(s) OR	§ 93.109(e)(2)(i) OR