

1-hour ozone area (third scenario) could choose to complete the budget test for the 1-hour ozone nonattainment area and the no-greater-than-2002 test for the remaining portion of the 8-hour ozone area for the attainment year, an intermediate year, and the last year of the transportation plan. EPA is not proposing to require such an area to complete the interim emissions test for the entire 8-hour ozone nonattainment area in all cases, in addition to the budget test with the 1-hour ozone SIP. EPA acknowledges that there may be cases where it is difficult to separately model the remaining portion of the 8-hour ozone area, *e.g.*, in an area where the remaining 8-hour ozone area is a ring of counties around the 1-hour ozone area. However, in this case, an area could always choose to complete only the interim emissions test(s) for the entire 8-hour ozone area, rather than the budget test with 1-hour ozone SIP budgets for the 1-hour ozone area.

For areas covered by the third boundary scenario in the above table where the 8-hour ozone area is larger than the 1-hour ozone area, the budget test would be completed for the entire 1-hour ozone area, as is done for conformity determinations for the 1-hour ozone standard. For areas covered by the fourth scenario where 8-hour and 1-hour ozone areas overlap, the budget test would only be done for the portion of the 1-hour ozone area and budgets that overlap with the 8-hour ozone area. EPA acknowledges that the budget test with a portion of a 1-hour ozone budget may be difficult to implement in many areas, since it assumes that areas will be able to determine easily the amount of budget emissions that are in the relevant portion. EPA requests examples for when using a portion of a 1-hour ozone budget would be appropriate and how to calculate such a portion. The consultation process would be used to determine whether the budget test for the fourth scenario is appropriate and if so, how it should be implemented.

Finally, EPA notes that the consultation process should be used to determine which analysis years should be selected for regional emissions analyses where the budget test and interim emissions tests are used. Sections 93.118(d) and 93.119(e) of the current conformity rule require similar analysis years for modeling in the last year of the transportation plan and for any intermediate years for both budget and interim emissions tests. However, the analysis years for the short-term may be different for the budget test and interim emissions tests in some cases. For example, § 93.118 requires modeling

for the budget test to be completed for the attainment year if it is within the timeframe of the transportation plan; § 93.119 requires the first analysis year for the interim emissions tests to be within the first five years of the transportation plan. The consultation process can be used to pick analysis years that would satisfy both the budget and interim emissions test requirements for areas using both tests prior to adequate or approved 8-hour ozone SIP budgets being established.

3. Options for 8-hour Ozone Areas That Qualify for EPA's Clean Data Policy

As described in Section V.A.3., today's conformity proposal would also extend the current rule's flexibility for certain 1-hour ozone areas to 8-hour ozone areas that are covered by EPA's June 2, 2003 proposal (68 FR 32835). The June 2003 proposal extends the existing 1-hour ozone clean data policy for the SIP process to future 8-hour ozone areas that are required to submit control strategy SIPs.

Specifically, we are proposing to require such 8-hour ozone areas with adequate or approved 1-hour ozone SIP budgets to meet one of the following four options to complete conformity:

- The interim emissions tests, as described in Section V.;
- The budget test using the adequate motor vehicle emissions budgets in a submitted control strategy SIP for the 8-hour ozone standard;
- The budget and/or interim emissions tests using existing 1-hour ozone SIP budgets and/or applicable interim emissions tests, as described in A.3. of this section for different scenarios of 1-hour and 8-hour ozone nonattainment boundaries; or
- The budget test using the motor vehicle emissions level in the most recent year of clean data as budgets, if such budgets are established by the EPA rulemaking that determines an area to have clean data for the 8-hour ozone standard.

See the proposed regulatory text for these options in § 93.109(e)(4).

4. General Implementation of Regional Tests

The proposal also retains the existing rule's general requirements that regional emissions analyses for ozone areas must address NO_x and VOC precursors (40 CFR 93.102(b)(2)(i)). All proposed interim emissions test options would be required to address both 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(e)(3) for this proposed regulatory text.

The consultation process should be used to determine the models and assumptions for completing the interim emissions tests and/or the budget test, as required by § 93.105(c)(1)(i) of the current rule. The consultation process can also be used to select the conformity test(s) before 8-hour ozone SIPs are submitted. See the proposed regulatory text in § 93.109(e) for a general overview of when the budget test and interim emissions tests apply in 8-hour ozone nonattainment areas with 1-hour ozone SIP budgets.

B. Why Are We Proposing These Options?

EPA has received stakeholder input asking EPA to provide 8-hour ozone areas with conformity flexibility in the time period before 8-hour ozone SIPs are established. In response, EPA is proposing a menu of options for 8-hour ozone areas that have existing 1-hour ozone SIP budgets, rather than requiring only one conformity test be used.

Allowing areas to choose between the interim emissions tests and/or the budget test based on 1-hour ozone SIPs would accommodate the many different boundary scenarios described in VI.A.2.

EPA has previously found that the interim emissions tests are sufficient for meeting the Clean Air Act requirements for a given standard before a SIP with adequate budgets is in place for that standard. As discussed in Sections IV. and V. of this proposal, EPA believes that Clean Air Act sections 176(c)(1) and (c)(3)(A)(iii) can be met through only one or a combination of interim emissions tests, depending upon an area's classification.

Our proposal to allow areas to use the 1-hour ozone budgets before 8-hour ozone budgets are available does not mean that areas would be determining conformity for the 1-hour ozone standard. As articulated in the proposed 8-hour ozone implementation rule, EPA is proposing that conformity for only one ozone standard apply at a time (June 2, 2003, 68 FR 32823–32824).

We are proposing to offer the budget test as a choice because we think that many 1-hour ozone budgets provide as good an analytical test as the other tests that exist or are proposed for use before