

emissions from the proposed transportation system to be less than or equal to the emissions from the current system, rather than requiring an actual reduction in emissions as is required for ozone and CO areas with higher classifications. Where the Clean Air Act does not require such emission reductions, EPA believes that if transportation activities can be found to conform by producing no adverse impacts on the number and severity of air quality violations, such a demonstration would be consistent with the Clean Air Act requirements.

The proposal would also reduce the resource burden for analysis years where no new projects are proposed to be completed and assumptions do not change. Under the current rule, a regional emissions analysis is required for all analysis years, even if no new projects are proposed for analysis years in the distant future. For such analysis years, the emissions from the build and no-build scenarios contain the same projects and assumptions, and therefore, result in exactly the same level of emissions.

One may argue that it would be obvious that the build-no-greater-than-no-build test is passed without calculating the emissions for such analysis years. Furthermore, the Clean Air Act requirement to not worsen air quality may be met by documenting in the conformity determination that projects, assumptions, and thus emissions would remain the same for affected analysis years. On the other hand, one may argue that a build/no-build regional analysis should still be completed for all analysis years to inform long-term transportation and air quality planning. However if such information is deemed appropriate, analyses could still be done voluntarily. EPA requests comment on this proposed change to the build/no-build analysis year requirements.

D. Test Options for Ozone and CO Nonattainment Areas of Higher Classifications

1. What Are We Proposing?

EPA is proposing three options that would affect regional emissions analyses before adequate or approved SIP budgets are established in ozone and CO areas of higher nonattainment classifications. Under the current rule, these areas are required to complete both the build-less-than-no-build and less-than-baseline year tests when a conformity determination is completed during this time period. This proposal would affect moderate and above 1-hour and 8-hour ozone areas, moderate CO

areas with design values greater than 12.7ppm, and serious CO areas.

EPA requests comment on the following proposed options for these areas:

(1) Complete *both* the build-less-than-no-build *and* less-than-baseline year tests;

(2) Complete *either* the build-less-than-no-build or less-than-baseline year test; or

(3) Require that only one of these tests be met and eliminate the second test as an option altogether.

The proposed regulatory text in § 93.119(b)(1) reflects the first option, although EPA could finalize any one of the three proposed options.

The first option would retain the current conformity rule requirement that such areas use both the current build-less-than-no-build test and the less-than-baseline year test. Under this option, emissions from the proposed transportation system (build) would have to be less than emissions from the existing system (no build) and less than emissions in 1990 (for higher classification 1-hour ozone and CO areas) or 2002 (for higher classification 8-hour ozone areas).

The second proposed option would allow these areas to choose between the current build-less-than-no-build test and the less-than-baseline year test (either 1990 or 2002, as applicable). The final option would require only one test in these areas while eliminating the second test as an option altogether. For example, this option could require the less-than-baseline year test and delete the build/no-build test from the conformity rule as an option for affected areas.

2. Why Are We Proposing These Options?

EPA is interested in exploring alternatives in an effort to provide the most flexible and least burdensome way of meeting statutory requirements. When EPA first promulgated the transportation conformity rule (January 11, 1993, 58 FR 3782), EPA determined that moderate and above 1-hour ozone areas and CO areas of higher classifications would have to meet both the build-less-than-no-build test and the less-than-baseline year test to satisfy both statutory requirements that transportation planning activities not cause or contribute to violations of the standards (Clean Air Act section 176(c)(1)(B)) and that such activities contribute to annual emissions reductions (Clean Air Act section 176(c)(3)(A)(iii)).

The current conformity rule requires higher classification ozone and CO areas

to meet both of these tests in the absence of an adequate or approved SIP budget (option 1). For the same reasons described in previous rulemakings,² EPA proposes as its first option to continue these same requirements for current 1-hour ozone and CO and new 8-hour ozone nonattainment areas with higher classifications. EPA believes that the current conformity rule would continue to assist areas in meeting Clean Air Act requirements.

However, ten years of experience in implementing the conformity rule has caused EPA to consider whether either the build-less-than-no-build test or less-than-baseline year test (option 2) may also be sufficient to meet both the statutory requirements that transportation activities not contribute to violations and contribute to emissions reductions. First, the build-less-than-no-build test may by itself demonstrate that emissions from the proposed transportation plan would be lower than projected future emissions from the existing planned transportation system, since the build scenario must be less than the no-build scenario. Thus, one might conclude that emissions from the proposed transportation plan contribute to emissions reductions and may not cause or contribute to new violations of the ozone standard.

Alternatively, if emissions are reduced from baseline year levels, then one might conclude that air quality would not be worsened from current levels. The less-than-baseline year test by itself might also demonstrate that implementation of the proposed transportation system may produce actual emissions reductions from the motor vehicle emission baseline year, since emissions must be less than or reduced from the baseline year. Thus, by using only the less-than-baseline year test, the transportation plan may both contribute to emissions reductions and not itself produce emissions that could cause or contribute to any violations. EPA requests comment on this alternative of offering a choice between the build-less-than-no-build and less-than-baseline year tests to meet both statutory conformity requirements, for ozone areas and CO areas of higher classifications.

Further, EPA proposes a third option that such areas be required to meet only one interim emissions test while eliminating the other interim emissions test as an option altogether. As described above for option 2, if it can be concluded that either test is sufficient

² January 11, 1993, proposed conformity rule (58 FR 3782-3784) and the July 9, 1996, proposed rule (61 FR 36116-36117).