

for meeting statutory requirements, then retaining only one test in the conformity regulation would also meet the statute. EPA requests comment on this alternate proposal.

V. Regional Conformity Tests in 8-Hour Ozone Areas That Do Not 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 do not have an existing 1-hour ozone SIP with applicable budgets. These 8-hour ozone areas either were never designated nonattainment under the 1-hour ozone standard or were 1-hour ozone nonattainment areas that for various reasons never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. A regional emissions analysis is the part of a conformity determination that assesses whether the emissions produced by transportation activities are consistent with state and local air quality goals.

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

Once a SIP for the 8-hour ozone standard is submitted with a budget(s) that EPA has found adequate or approved, the budget test would be used in accordance with § 93.118 to complete all applicable regional emissions analyses. Conformity would be demonstrated if the transportation system emissions reflecting the proposed transportation plan, TIP, or project not from a conforming plan and TIP were less than or equal to the motor vehicle emissions budget level defined by the SIP as being consistent with clean air.

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) or a maintenance plan. The first SIP could also be submitted earlier and demonstrate a significant level of emission reductions from the current level of emissions. For example, an area could submit an early 8-hour ozone SIP that demonstrates a specific percentage of emission reductions (e.g., 5–10%) in the year 2007, from 2002 baseline year emissions. An early 8-hour SIP would include emissions inventories for all emissions sources for the entire 8-hour nonattainment area and would meet applicable requirements for reasonable further progress SIPs. EPA has discussed such an option in the context of its 8-hour ozone implementation rule (June 2, 2003, 68 FR 32822) and the

1997 final conformity rule (August 15, 1997, 62 FR 43798–43799).

Whatever the case, the interim emissions test(s) would no longer apply for conformity purposes for either NO_x or VOCs once an 8-hour ozone SIP is submitted and EPA has found adequate or approved its budget(s) for that ozone precursor. Section 93.118 of the current rule describes the budget test; references in § 93.118(a) are being updated in this proposal to be consistent with proposed changes in § 93.109.

EPA encourages nonattainment areas to develop their 8-hour ozone SIPs in consultation with state and local air quality and transportation agencies to facilitate future conformity determinations. EPA Regions are available to assist on an “as needed” basis, including consultation on the development of early 8-hour ozone SIPs.

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

The following paragraphs outline the options for doing conformity before adequate or approved 8-hour ozone SIP budgets are established in 8-hour ozone areas covered by this section of the proposal.

Marginal and below classifications and subpart 1 areas. 8-hour ozone areas that are not of moderate and above classifications include: 8-hour ozone areas of marginal and below classifications and 8-hour ozone areas designated nonattainment under Clean Air Act subpart 1.

EPA proposes that these 8-hour ozone areas must pass one of the following tests for conformity determinations that occur before adequate or approved 8-hour ozone SIP budgets are in place:

- The build-no-greater-than-no-build test, or
- The no-greater-than-2002 emissions test.

In other words, this proposal would give these 8-hour ozone areas a choice between two interim emissions tests, rather than provide only one test or require that both tests be completed. Conformity would be demonstrated if the transportation system emissions reflecting a proposed transportation plan or TIP were less than or equal to either the emissions from the existing transportation system (no-build) or the level of motor vehicle emissions in 2002.

A discussion of the proposed changes to the interim emissions tests can be found in Section IV. of this proposal. See the proposed regulatory text in § 93.119(b)(2). See EPA’s June 2, 2003, proposed implementation rule for the 8-hour ozone standards (68 FR 32811–32816) for more information on the

proposal to designate some 8-hour ozone areas under Clean Air Act subpart 1.

Moderate and above classifications.

As described in Section IV.D., EPA proposes three options for regional emissions analyses in moderate and above 8-hour ozone areas that do not have adequate or approved 1-hour ozone SIPs. The options are:

- (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 remaining 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.

3. Options for 8-Hour Ozone Areas That Qualify for EPA’s Clean Data Policy

The proposal would also extend the current conformity rule’s flexibility for certain 1-hour ozone “clean data areas” to 8-hour ozone areas that are required to meet certain SIP requirements (e.g., moderate and above ozone areas). Today’s conformity proposal is also consistent with the clean data option in EPA’s proposed 8-hour ozone implementation rule (June 2, 2003, 68 FR 32835).

As background, EPA issued a policy memorandum on May 10, 1995 that addressed SIP requirements in a small number of moderate and above ozone areas (entitled “Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard”). Under the May 1995 policy, EPA could declare through rulemaking that a moderate or above 1-hour ozone area was a “clean data area,” if an area had sufficient monitoring data showing attainment of the 1-hour ozone standard. A clean data area is not required to submit any outstanding reasonable further progress or attainment SIPs, since the area is already attaining the standard. Section 93.109(c)(5) of the existing conformity rule allows clean data areas for the 1-hour ozone standard to request that a budget based on the level of motor vehicle emissions in the most recent year of clean data be established through EPA’s rulemaking that determines an area to be a clean data area.

Similarly, today’s proposal would allow 8-hour ozone areas that have clean data and are required to submit