

ozone standard by December 2007, EPA would take action in Spring 2008 to end the deferred nonattainment designation effective date and replace it with an attainment designation that would become effective shortly thereafter. If, however, an area misses a key EAC milestone, the November 14, 2002 memorandum states that EPA would retract its deferral, and the nonattainment designation would be effective shortly after the missed milestone. Neither today's proposal nor the June 2, 2003 rulemaking take comment on the EAC program itself.

A deferred effective date for 8-hour ozone designations in areas that opted into an EAC has certain implications for when conformity applies for both the 8-hour and 1-hour ozone standards. Consistent with the current conformity rule § 93.102(d) and Clean Air Act section 176(c)(6), conformity for the 8-hour ozone standard would not apply until one year after the effective date of an EAC area's 8-hour nonattainment designation. Therefore, conformity for the 8-hour ozone standard would apply in an EAC area only if the area fails to meet all the terms and milestones of its compact and the nonattainment designation becomes effective. In this case, conformity for the 8-hour standard would be required one year after the effective date of EPA's nonattainment designation that would occur shortly after a missed EAC milestone. Conversely, if the area meets all of the EAC milestones and attains the 8-hour ozone standard by December 2007, conformity for the 8-hour ozone standard would never apply since the area's ultimate effective designation would be attainment for the 8-hour ozone standard.

Conformity for the 1-hour ozone standard will continue to apply in EAC areas that are currently 1-hour ozone maintenance areas, and therefore are required to demonstrate conformity for that standard. For these areas, the effective date of 8-hour designations would be deferred and the 1-hour standard would not be revoked. If a maintenance area meets all of its EAC milestones and attains the 8-hour ozone standard by December 2007, conformity for the 1-hour standard would no longer apply once EPA revokes that standard one year after the effective date of EPA's 8-hour attainment designation (*i.e.*, Spring 2009).

If, however, a 1-hour ozone maintenance area fails to meet a milestone in its EAC, EPA would remove its deferral of the effective date and the area's 8-hour ozone nonattainment designation would become effective shortly after the

missed milestone. Under this scenario, conformity for the 1-hour ozone standard would continue to apply for one year after the effective date of EPA's nonattainment designation, at which time the 1-hour ozone standard would be revoked, the one-year conformity grace period would expire and conformity for the 8-hour ozone standard would begin to apply.

IV. General Changes in Interim Emissions Tests

A. Background

Conformity determinations for transportation plans and TIPs as well as transportation projects not from a conforming plan and TIP must include a regional emissions analysis that fulfills certain Clean Air Act provisions. Section 176(c) requires that transportation activities in nonattainment and maintenance areas must not worsen air quality. In addition, transportation activities in ozone and CO areas of higher nonattainment classifications need to contribute emission reductions towards attainment.

The conformity rule provides for several different regional emissions analysis tests that satisfy these Clean Air Act requirements in different situations. Once a SIP with a motor vehicle emissions budget ("budget") is submitted for an air quality standard and EPA finds the budget adequate or approves it as part of the SIP, conformity is demonstrated using the budget test for that pollutant or precursor, as described in § 93.118 of the conformity rule. Before an adequate or approved SIP budget is available, conformity of the transportation plan, TIP, or project not from a conforming plan and TIP is demonstrated with the interim emissions tests, as described in § 93.119.

Today's proposal outlines several options for completing regional emissions analyses for the new standards before SIP budgets for these standards are available. According to EPA's proposed implementation rule (June 2, 2003, 68 FR 32830–32837), 8-hour ozone nonattainment areas of moderate and above classifications and some areas designated under Clean Air Act subpart 1 would have two or three years from the effective date of designations to submit a SIP (either for attainment or reasonable further progress) with budgets for that standard. Areas classified as marginal and some areas designated under subpart 1 (those with early attainment dates) may not have 8-hour ozone SIP budgets for some time, since their attainment dates would

be relatively soon after the date of their 8-hour ozone designations. These areas would only have 8-hour ozone SIP budgets if they voluntarily submitted a control strategy SIP or submitted a maintenance plan for redesignation. In addition, EPA currently anticipates that PM_{2.5} nonattainment areas would submit a SIP with budgets within three years of PM_{2.5} nonattainment designations.

Therefore, as proposed, conformity would likely apply in all 8-hour ozone and PM_{2.5} nonattainment areas before SIP budgets for the new standards are available, and during this time period, interim emissions tests would be used for conformity determinations. It is important to note that EPA has historically called such tests the "emission reduction tests." However, since the actual reduction of emissions would not always be required in many areas (as described below and in proposed § 93.119), EPA is proposing to change "emission reduction test" to "interim emissions test" throughout the conformity regulation.

The following paragraphs generally describe the proposed changes to the interim emissions tests (under § 93.119). Sections V., VI., and VII. describe the application of these tests in different 8-hour ozone and PM_{2.5} areas (under § 93.109).

B. Baseline Year Test for 8-Hour Ozone and PM_{2.5} Areas

1. What Are We Proposing?

We are proposing to add the following tests to the conformity rule for use in 8-hour ozone and PM_{2.5} nonattainment areas:

- The "less-than-2002 emissions" test, and
- The "no-greater-than-2002 emissions" test.

Under these interim emissions tests, conformity would be demonstrated if the emissions from the proposed transportation system are less than or no greater than 2002 motor vehicle emissions in a given area. Proposed regulatory text for the 2002 baseline year tests can be found in § 93.119. See Sections V.–VII. for how these tests are proposed to be applied in 8-hour ozone and PM_{2.5} areas.

Although today's action proposes no substantive change to the 1990 baseline year tests for existing areas, § 93.119 has been reorganized to also include the provisions for new 8-hour ozone and PM_{2.5} areas.

2. Why Are We Proposing These Changes?

EPA believes that the year 2002 is more appropriate than the year 1990 in