

meeting Clean Air Act provisions in new 8-hour ozone and PM_{2.5} areas. Under the statute, transportation activities in nonattainment and maintenance areas cannot increase the frequency or severity of air quality violations. EPA selected the year 1990 as the baseline year for nonattainment areas under the existing standards, since that was the baseline year for many requirements in the Clean Air Act Amendments of 1990, including the base year for SIP inventories. It was also the year that the relevant Clean Air Act legislation was enacted.¹ However, 1990 has little relevance as a baseline year for emissions under the new standards.

Therefore, EPA has preliminarily selected 2002 as the baseline year for SIP inventories under the new 8-hour ozone and PM_{2.5} standards. EPA's November 18, 2002 memorandum, "2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, PM_{2.5}, and Regional Haze Programs," identifies 2002 as the anticipated emission inventory base year for the SIP planning process to address both of these pollutants and standards. In addition, EPA's 8-hour ozone implementation rule proposes 2002 as the base year for 8-hour ozone SIP inventories (June 2, 2003, 68 FR 32810). The 2002 SIP inventories would provide the baseline level of motor vehicle emissions in 2002 to complete either proposed baseline year test. In addition, EPA's memo explains that "the selection of 2002 harmonizes dates for other reporting requirements, e.g., EPA's Consolidated Emissions Reporting Rule (CERR) that requires submission of emission inventories every three years; 2002 is one of the required years for such updates." Therefore, coordinating conformity's baseline with other data collection and inventory requirements would allow state and local governments to use their resources more efficiently.

Under § 93.105(c)(1)(i) of the current rule, the interagency consultation process would be used to determine the latest assumptions and models for generating 2002 motor vehicle emissions to complete either baseline year test. In general, the 2002 baseline year test can be completed with the baseline year SIP's 2002 motor vehicle emissions inventory, if the SIP has been submitted in time for the current conformity determination. If the SIP has

not been submitted, conformity could be completed using draft 2002 baseline year emissions from a SIP inventory under development. Alternatively, an MPO, in consultation with state and local air agencies, could develop 2002 baseline year emissions as part of the conformity analysis. Whatever the source, the 2002 baseline year emissions level that is used in conformity must be based on the latest planning assumptions available for the year 2002, the latest emissions model, and appropriate methods for estimating travel and speeds as required by §§ 93.110, 93.111 and 93.122 of the current conformity rule.

C. Build/No-Build Test for Existing and New Nonattainment Areas

1. What Are We Proposing?

EPA is proposing a revised build/no-build test for certain existing and new nonattainment areas. Under the current rule, conformity is demonstrated with the "build-less-than-no-build" test for all ozone, CO, PM₁₀, and NO₂ areas. The proposal would amend § 93.119 to create the "build-no-greater-than-no-build" test, where conformity would be met if emissions from the proposed transportation system ("build") were less than or equal to emissions from the existing transportation system ("no-build").

Under this proposal, the build-no-greater-than-no-build test would be available to the following subset of new and existing areas:

- 8-hour ozone areas of marginal and below classifications,
- 8-hour ozone areas designated nonattainment under Clean Air Act subpart 1,
- All PM_{2.5} areas,
- 1-hour ozone areas of marginal and below classifications,
- CO areas of moderate classification with design values less than 12.7 ppm,
- Not classified CO areas,
- All PM₁₀ areas, and
- All NO₂ areas.

Sections V., VI., and VII. of this proposal provide more detail regarding the application of the build/no-build test in various 8-hour ozone and PM_{2.5} areas.

For areas that would be using the build-no-greater-than-no-build test, EPA is also proposing to modify § 93.119(e) of the current rule so that a regional emissions analysis would not be necessary for future analysis years where the build (or "action" scenario) and no-build (or "baseline" scenario) contain exactly the same transportation projects and planning assumptions, for the reasons described below. Such a

case may occur in smaller areas that do not have projects planned for later years in the regional emissions analysis, and population, land use, economic, and other assumptions do not change between the build and no-build scenarios for those years. Under this proposal, a regional emissions analysis would continue to be required for applicable years where the action and baseline scenarios contain different projects and assumptions.

This proposed change can be found in § 93.119(g)(2) of the proposed regulatory text. This proposal would require that the conformity determination include documentation that a regional emissions analysis is not completed for analysis years in which no new projects are proposed and no change in planning assumptions has occurred.

Finally, § 93.119 is being reorganized in general to accommodate the above and other changes articulated in this proposal for new and existing areas.

2. Why Are We Proposing These Changes?

EPA believes that changing the build/no-build test for certain areas is consistent with Clean Air Act section 176(c)(3)(A)(iii) which specifically requires that transportation plans and TIPs contribute to annual emissions reductions only in the higher classifications of ozone and CO areas. This statutory provision does not apply to any other type of nonattainment area.

Instead, all other areas must demonstrate only that transportation activities do not cause or contribute to new violations, increase the frequency or severity of existing violations, or delay timely attainment, pursuant to Clean Air Act section 176(c)(1)(B). EPA believes that if the "build" is no greater than (i.e., less than or equal to) the "no-build," that such a demonstration is made, since only an increase in emissions would worsen air quality.

This change to the build/no-build test would make its implementation consistent with the implementation of the baseline year tests: in ozone and CO areas of higher classifications, expected emissions from the proposed transportation system must be less than emissions in the baseline year, while in all other areas, expected emissions must be no greater than emissions in the baseline year. For further discussion of the rationale for how and where the baseline year tests apply, please refer to the preamble to the January 11, 1993 proposed rule (58 FR 3782–3784) and the preamble to the July 9, 1996 proposed rule (61 FR 36116–36117).

Today's proposal would provide flexibility to certain areas by allowing

¹ Please note that PM₁₀ areas can use an alternate baseline year for conformity if the applicable SIP is based on a baseline inventory from a different calendar year (40 CFR 93.119(c)(2)). EPA is not proposing to offer an alternate baseline year for PM_{2.5} areas since all PM_{2.5} areas should be establishing 2002 baseline SIP inventories.