environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.755 is amended by revising paragraph (a) to read as follows:

§117.755 Shrewsbury River.

(a) The Route 36 Bridge, mile 1.8, at Highlands, New Jersey, shall open on signal; except that:

(1) From 11 p.m. to 7 a.m. the draw shall open on signal after at least a 4-hour advance notice is given.

(2) From May 15 through October 15, 7 a.m. to 8 p.m., the draw need open on the hour and half hour only.

(3) From December 1 through March 31, the draw shall open on signal at all times after at least a 4-hour advance notice is given.

(4) The owners of the bridge shall provide and keep in good legible condition, two clearance gauges, with figures not less than eight inches high, designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

* * * * *

Dated: November 29, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–27217 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[OAR–2003–0049; FRL–7847–2]

Options for $PM_{2.5}$ and PM_{10} Hot-Spot Analyses in the Transportation Conformity Rule Amendments for the New $PM_{2.5}$ and Existing PM_{10} National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rule.

SUMMARY: This supplemental proposal follows EPA's recent final rule that includes most of the transportation conformity requirements for the new 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards. In today's action, EPA is requesting further comment on options for consideration of localized emissions impacts of individual transportation projects in particulate matter ($PM_{2.5}$ and PM_{10}) nonattainment and maintenance areas. The Clean Air Act requires federally supported highway and transit projects to be consistent with (''conform to'') the purpose of a state air quality implementation plan. EPA has consulted with the Department of Transportation (DOT), and DOT concurs with this supplemental proposal.

DATES: Written comments on this supplemental proposal must be received on or before January 12, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0049 by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov.
- *Fax:* 202–566–1741.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–0049.
- Hand Delivery: EPA Docket Center, room B102, EPA West Building, 1301 Constitution Avenue NW, Washington DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0049. EPA's

policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Unit I.C. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, e-mail address: *kapichak.rudolph@epa.gov,* telephone number: (734) 214–4574, fax number 734–214–4052; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, e-mail address: *berry.laura@epa.gov*, telephone number: (734) 214–4858, fax number 734–214–4052.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by the conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this supplemental proposal. This table lists the types of entities of which EPA is aware that potentially could be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 93.102 of the transportation conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as ''CBI only'' to the following address: Attention: Joe Pedelty, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, Docket ID No. OAR–2003–0049. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be publicly disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly indicating that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please

consult Joe Pedelty. He can be contacted at: Joe Pedelty, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, e-mail address: *pedelty.joe@epa.gov*, telephone number: (734) 214–4410, fax number (734) 214–4052.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may pay a reasonable fee for copying docket materials.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' Although EPA is not required to consider these late comments, we may do so as appropriate, considering time and volume constraints.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. You should also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. However, if EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to further consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2003–0049. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Air Docket ID No. OAR–2003–0049. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and are thus made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section I.C.2. These electronic submissions will be accepted only in either WordPerfect or ASCII file format. Please avoid the use of special characters and any form of encryption, as this may adversely affect our ability to read these submissions.

2. By Mail

Send two copies of your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–0049.

3. By Hand Delivery or Courier

Deliver two copies of your comments to: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC., Attention Air Docket ID No. OAR–2003–0049. Such deliveries can only be accepted during the Docket's normal hours of operation as identified in Section I.B.1.

4. By Facsimile

Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2003–0049.

D. How Can I Get Copies of This Document?

1. Docket

EPA has established an official public docket for this action under Docket ID No. OAR–2003–0049. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA's Transportation Conformity Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*. You may also access this document electronically under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA

Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information for which disclosure is restricted by statute is not included in the official public docket and will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1. above. EPA intends to work towards providing electronic access in the future to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information for which disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

II. Background

A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the state air quality implementation plan (SIP). Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (''maintenance areas'' with plans developed under Clean Air Act section 175A) for the following transportation-related criteria pollutants: ozone, particulate matter ($PM_{2.5}$ and PM_{10}),[1] carbon monoxide (CO), and nitrogen dioxide (NO_2). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or ''standards''). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published a comprehensive set of amendments on August 15, 1997 (62 FR 43780) that clarified and streamlined language from the 1993 rule. EPA has made other smaller amendments to the rule both before and after the 1997 amendments.

Most recently, on July 1, 2004, EPA published a final rule (69 FR 40004) that amends the current conformity rule to accomplish three objectives. The final rule:

- Provides conformity procedures for state and local agencies under the new ozone and $PM_{2.5}$ air quality standards;
- Incorporates existing EPA and DOT federal guidance into the conformity rule consistent with a March 2, 1999 U.S. Court of Appeals decision; and
- Streamlines and improves the conformity rule.

The July 1, 2004 final conformity rule incorporated most of the provisions from the November 5, 2003 proposal for conformity under the new ozone and $PM_{2.5}$ standards (68 FR 62690). EPA is conducting its conformity rulemakings for the new standards in the context of EPA's broader strategies for implementing the new ozone and $PM_{2.5}$ standards.

The final rule also incorporated all of the amendments resulting from a separate June 30, 2003 proposal (68 FR 38974). This proposal addressed the March 2, 1999 court ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999), and incorporated existing federal guidance consistent with the court decision.

B. Why Are We Issuing This Supplemental Proposal?

In the November 2003 proposal, EPA presented several options concerning hot-spot analyses in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. EPA received substantial comment on this portion of the November 2003 proposal. After considering these comments, EPA, in consultation with the Department of Transportation (DOT), has decided to request further public comment through this supplemental proposal on $PM_{2.5}$ and PM_{10} hot-spot analyses, including additional options for $PM_{2.5}$ and PM_{10} hot-spot requirements and those options presented in the November 2003 proposal. EPA is not requesting today further comment on any other issues raised in the November 2003 proposal or the July 1, 2004 final rule.

EPA will address all comments received on $PM_{2.5}$ and PM_{10} hot-spot analysis requirements both in response to the November 2003 proposal as well as this supplemental proposal in a final rulemaking after the close of the comment period. EPA intends to complete its rulemaking on $PM_{2.5}$ and PM_{10} hot-spot requirements before $PM_{2.5}$ nonattainment designations become effective. The existing PM_{10} hot-spot conformity requirements are not affected by today's supplemental proposal, and continue to apply in PM_{10} nonattainment and maintenance areas unless and until EPA makes any final rule changes in response to this supplemental proposal.

EPA has consulted with DOT, our federal partners in implementing the transportation conformity regulation, in developing this supplemental proposal, and DOT concurs with its content.

[1] Section 93.102(b)(1) of the conformity rule defines $PM_{2.5}$ and PM_{10} as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

III. $PM_{2.5}$ Hot-Spot Analyses

A. What Are We Proposing?

1. Background

EPA is proposing several additional options for hot-spot analyses for project-level conformity determinations in $PM_{2.5}$ nonattainment and maintenance areas. Some options were proposed in the November 5, 2003 proposal, and other options are being newly proposed today. Comments can be submitted on all $PM_{2.5}$ hot-spot options during the comment period for this supplemental proposal. The options below are listed in terms of what would be required for project-level conformity determinations before and after a $PM_{2.5}$ SIP is submitted in a given $PM_{2.5}$ nonattainment or maintenance area. Today's proposed regulatory text combines various $PM_{2.5}$ and PM_{10} hot-spot options as illustrative examples, since common sections and paragraphs of the conformity rule would be affected under the supplemental proposal. However, EPA believes that any combination of the proposed $PM_{2.5}$ or PM_{10} hot-spot options could be included in the final rule.

A hot-spot analysis is defined in § 93.101 of the conformity rule for CO and PM_{10} areas as an estimation of likely future localized pollutant concentrations and a comparison of those concentrations to the relevant air quality standard. In general, a quantitative or qualitative hot-spot analysis must show that a given project does not cause or contribute to any new violations of the air quality standard or increase the frequency or severity of existing violations. A hot-spot analysis assesses impacts on a scale smaller than an entire nonattainment or maintenance area, including for example, congested roadway intersections and highways or transit terminals.

The existing conformity rule requires a hot-spot analysis for all Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funded or approved non-exempt transportation projects in CO and PM_{10} nonattainment and maintenance areas (*see* 40 CFR 93.116 and 93.123). This requirement applies for all project-level conformity determinations that occur both before and after a SIP is submitted for the CO or PM_{10} air quality standard.

The type of hot-spot analysis—quantitative or qualitative—varies depending on the type of project involved. The current conformity rule requires quantitative hot-spot analyses for projects of most concern in CO and PM_{10} areas. For example, § 93.123(b)(1) currently requires quantitative PM_{10} hot-spot analyses for the following types of transportation projects in PM_{10} areas:

- Projects which are located at sites at which violations have been verified by monitoring data;
- Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and
- New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

Section 93.123(b)(4) of the conformity rule clarifies that the requirements for PM_{10} hot-spot quantitative analysis will not take effect until EPA releases modeling guidance and announces in the **Federal Register** that these requirements are in effect. Quantitative hot-spot analyses use dispersion modeling to determine the effects of motor vehicle emissions associated with a highway or transit project on air quality. Qualitative reviews are required for all other non-exempt projects in CO and PM_{10} areas. Qualitative reviews are more streamlined and consider local factors, such as local monitoring data near a proposed project rather than dispersion modeling. See Section IV. of this notice for further information regarding EPA's proposed options for retaining or changing the current conformity rule's PM_{10} hot-spot analysis requirements.

In the November 5, 2003 proposal, EPA presented two options for hot-spot analyses for project-level conformity determinations in $PM_{2.5}$ nonattainment and maintenance areas. Under the first option (Option 1), hot-spot analyses would not be required for any FHWA/FTA non-exempt projects in $PM_{2.5}$ nonattainment and maintenance areas at any time. Under the second option (Option 2), quantitative $PM_{2.5}$ hot-spot analyses would only be required for FHWA/FTA projects at certain types of locations if the $PM_{2.5}$ SIP for an area identified such locations. Under Option 2, $PM_{2.5}$ hot-spot analyses would not be required for any projects prior to the submission of a SIP and then only if the $PM_{2.5}$ SIP in a given nonattainment area identified susceptible types of project locations. See the November 5, 2003 proposal (68 FR 62712–62713) for further information. These options are also repeated below along with the additional options EPA is proposing today.

2. $PM_{2.5}$ Hot-Spot Analyses Before SIP Submission

EPA is proposing the following $PM_{2.5}$ hot-spot options for project-level conformity determinations that occur prior to the submission of a $PM_{2.5}$ SIP:

- *Options 1 and 2:* Do not apply any $PM_{2.5}$ hot-spot analysis requirements for any $PM_{2.5}$ area before the submission of the $PM_{2.5}$ SIP, as described in the November 2003 proposal;
- *Option 3:* Apply the existing conformity rule's PM_{10} hot-spot analysis requirements with respect to $PM_{2.5}$ in all $PM_{2.5}$ areas;
- *Option 4:* Apply the existing conformity rule's PM_{10} hot-spot analysis requirements with respect to $PM_{2.5}$, unless the EPA Regional Administrator or state air agency finds that localized $PM_{2.5}$ violations are not a concern for a given $PM_{2.5}$ area; or
- *Option 5:* Apply the existing conformity rule's PM_{10} hot-spot analysis requirements with respect to $PM_{2.5}$, if the EPA Regional Administrator or state air agency finds that localized $PM_{2.5}$ violations are a concern for a given $PM_{2.5}$ area.

For Options 4 and 5, EPA intends localized $PM_{2.5}$ concentrations to be a concern if the Clean Air Act requirements for projects are not met, that is, if projects create new violations, increase the severity or frequency of existing violations, or delay timely attainment of the $PM_{2.5}$ standard. Please note that Options 3–5 would extend the existing PM_{10} hot-spot requirements with respect to the $PM_{2.5}$ standard, subject to the conditions outlined in the options. EPA is not proposing to require PM_{10} hot-spot analyses in $PM_{2.5}$ areas. Although EPA has not proposed specific language in § 93.123(b) for Options 4 and 5, EPA has described these options sufficiently in this preamble to include either or both of them in the final rule, if selected.

EPA requests comments on all of these options. Specifically, EPA invites commenters to submit any data as well as argument regarding the relevant statutory authority in support of their preferred option(s). EPA requests commenters to submit any information that exists that would support Options 1, 2, or 3. In addition, for Options 4 and 5 above, EPA requests comment today on whether state and local agencies will have information available to make findings prior to $PM_{2.5}$ SIP submission, and what type of information will be available during this time period.

An EPA or state air agency finding that $PM_{2.5}$ localized violations are or are not a concern (*i.e.*, a ''hot-spot finding'') prior to $PM_{2.5}$ SIP submission would be

based on a case-by-case review of local factors for a given $PM_{2.5}$ area. For example, such a review could consider the following local factors: $PM_{2.5}$ monitoring data and proximity to the $PM_{2.5}$ standard, future modeling projections and likelihood of new or worsening localized $PM_{2.5}$ violations at transportation-related project locations, the prevalence of heavy-duty diesel vehicles at certain types of locations (*e.g.*, highly congested intersections or large transit stations where significant traffic and engine idling occurs), site-specific terrain, meteorology, etc. As noted in the November 2003 proposal, since secondary particles take several hours to form in the atmosphere giving emissions time to disperse beyond the immediate area of concern, hot spot findings under options 4 and 5 would be based on direct particulate emissions that are attributable to an individual project.

If EPA finalizes an option under which hot-spot findings would be made, such findings would be made only after discussions among federal, state, and local air quality and transportation agencies through the interagency consultation process for a given $PM_{2.5}$ nonattainment area. A hot-spot finding would be made through a letter to the relevant state and local air quality and transportation agencies, MPO(s), FHWA, FTA, and EPA (in the case of a state air agency finding).

EPA notes that a hot-spot finding under Options 4 and 5 would not be completed through EPA's adequacy process for submitted SIPs with motor vehicle emissions budgets. Hot-spot findings would be done prior to a SIP's submission and would not affect the development of future SIPs and budgets for use in regional emissions analyses for conformity determinations.

3. $PM_{2.5}$ Hot-Spot Analyses After SIP Submission

EPA is proposing the following $PM_{2.5}$ hot-spot options for project-level conformity determinations that occur after the submission of a $PM_{2.5}$ SIP:

- *Option A:* Do not apply any $PM_{2.5}$ hot-spot analysis requirements for any $PM_{2.5}$ area (*i.e.*, Option 1 from the November 2003 proposal);
- *Option B:* Only require quantitative $PM_{2.5}$ hot-spot analyses for projects at those types of locations that the $PM_{2.5}$ SIP for a given area identifies as a localized $PM_{2.5}$ air quality concern (*i.e.*, Option 2 from the November 2003 proposal). No quantitative or qualitative analyses would be required for projects in other types of locations, or in $PM_{2.5}$ areas where the SIP does not identify types of locations as a localized $PM_{2.5}$ air quality concern; or
- *Option C:* Apply the existing conformity rule's PM_{10} hot-spot analysis requirements with respect to $PM_{2.5}$ for all projects in $PM_{2.5}$ areas with one minor addition, as described below.

Under Option B, $PM_{2.5}$ hot-spot analyses would only be required for projects at the types of locations identified in the $PM_{2.5}$ SIP; no qualitative hot-spot analyses would be done for any other projects. Option B would not require hot-spot analyses for all FHWA/FTA non-exempt projects in the $PM_{2.5}$ nonattainment or maintenance areas, as is proposed under Option C and currently required for CO and PM_{10} nonattainment and maintenance areas.

If EPA finalizes Option B, we would provide guidance on how to identify locations where transportation-related $PM_{2.5}$ hot-spots may exist. Examples of types of possible project locations include:

- Highly congested intersections,
- Large transit stations where significant traffic and engine idling occurs,
- Projects involving long or steep grades, or
- Monitors where the $PM_{2.5}$ standard has been exceeded or violated.

EPA requests comment on the above examples, and requests further information regarding other types of project locations that should be considered in possible future guidance on potential $PM_{2.5}$ hot-spots in a given area. Any future guidance would be available for use when states prepare their $PM_{2.5}$ SIPs.

Minor change to quantitative hot-spot requirements: For Option C, EPA is proposing one minor change to the existing rule's PM_{10} requirements for when quantitative analyses are required in $PM_{2.5}$ areas. As applied to $PM_{2.5}$ hot-spot analyses, the proposal would require that quantitative analyses be performed in those types of project locations that the $PM_{2.5}$ SIP identifies as a $PM_{2.5}$ hot-spot concern, in addition to the three types of projects where quantitative analysis would always be required, as outlined in Section III.A.1. This criterion would only be relevant after the $PM_{2.5}$ SIP is submitted. If EPA finalizes this minor change, we propose that it would apply to both $PM_{2.5}$ and PM_{10} hot-spot analyses. This change is described in greater detail in Section IV. of today's supplemental proposal relating to PM_{10} and the reader should refer to that section for further details. Regulatory text for this minor change is in § 93.123(b)(1) of today's action.

EPA also proposes to make a minor change to § 93.123(b)(1)(iii) to clarify that quantitative analyses would be required for such projects that *significantly* increase the number of diesel vehicles, so that quantitative analyses are not required for insignificant vehicle increases with *de minimis* localized emissions increases. The proposed change may also cover the cases where the number of vehicles increases but emissions do not increase because the added vehicles are cleaner (*e.g.*, retrofitted diesel vehicles).

4. Quantitative $PM_{2.5}$ Hot-Spot Analyses and Future EPA Guidance

For options that would require quantitative hot-spot analyses, EPA proposes to extend the current rule's § 93.123(b)(3) and (b)(4) requirements with respect to $PM_{2.5}$. Section 93.123(b)(3) currently requires that the consultation process be used to identify the specific cases in a given nonattainment or maintenance area under which PM_{10} quantitative hot-spot analyses are performed, and addresses categorical conformity determinations for certain transit projects and FTA actions in PM_{10} areas. A categorical conformity determination under the existing conformity rule and this proposal allows FTA to determine that a quantitative hot-spot analysis is not needed for a particular project if there is modeling that shows that such a project will not cause or contribute to new or worsening localized violations. Today's action would also propose to extend this sub-paragraph for $PM_{2.5}$ and allow DOT to choose to make a categorical conformity determination for $PM_{2.5}$ on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. Today's proposal does not substantively change § 93.123(b)(3) for FTA actions on certain transit projects, and EPA is not requesting comment on this existing flexibility.

However, the proposal would modify § 93.123(b)(3) to allow FHWA to make a categorical conformity determination for $PM_{2.5}$ and PM_{10} on certain roadways and intersections based on appropriate modeling of various configurations and activity levels. As described above, the current rule provides for such FTA categorical conformity determinations for only certain transit projects in PM_{10} areas.

We request comment on allowing FHWA to make a categorical determination for hot-spot analyses in appropriate cases if it believes that Clean Air Act requirements are met without additional $PM_{2.5}$ hot-spot analyses. EPA also requests information on what types of roadway and

intersection projects would be appropriately covered by this aspect of today's proposal. If finalized, EPA and DOT would consult on the development of additional guidance on the implementation of such a provision.

Under the proposal, the modeled scenarios used to make the categorical determinations would need to be derived in consultation with EPA, and more refined analyses would be necessary for projects which do not meet the parameters of the modeled scenario. See EPA's January 11, 1993 proposal (58 FR 3780) for further information on the current rule's requirements.

Similar to § 93.123(b)(4) of the current rule for PM_{10} areas, EPA also proposes to not require any quantitative $PM_{2.5}$ hot-spot analyses until EPA releases quantitative modeling guidance and announces in the **Federal Register** that $PM_{2.5}$ quantitative modeling requirements are in effect. If EPA finalizes an option that would require quantitative and/or qualitative $PM_{2.5}$ hot-spot analyses, we would provide guidance and appropriate models for carrying out such analyses in a timely manner. EPA would consult with conformity stakeholders when developing quantitative guidance.

5. Other Requirements

General requirements: For options that would require a $PM_{2.5}$ hot-spot analysis, EPA is proposing to extend the general requirements in § 93.123(c) of the current conformity rule to $PM_{2.5}$ areas. EPA is not proposing any substantive changes to these requirements in today's action. Under these current requirements, all hot-spot analyses include:

- The total emissions burden of direct $PM_{2.5}$ emissions which may result from the implementation of the project (including re-entrained road dust and construction dust as applicable), summed together with future background concentrations;
- The entire transportation project, after the identification of major design features which will significantly impact local concentrations;
- Consistent assumptions with those used in regional emissions analyses for inputs that are required for both analyses (*e.g.*, temperature, humidity);
- Assumptions for the implementation of mitigation or control measures only where written commitments for such measures have been obtained; and
- No temporary emissions increases from construction-related activities which occur only during the construction phase and last five years or less at any individual site.

See the preamble for the January 1, 1993 proposal (58 FR 3779–3780) and November 24, 1993 final rule (58 FR 62212–62213) for further information regarding the intent and rationale for these general hot-spot requirements.

Finally, as described in the November 2003 proposal, EPA is proposing to also extend the requirements of § 93.125(a) of the current conformity rule to $PM_{2.5}$ areas if a $PM_{2.5}$ hot-spot requirement is finalized. Section 93.125(a) of the existing conformity rule currently applies to all projects in CO and PM_{10} nonattainment and maintenance areas.

As described in the November 2003 proposal and today's action, FHWA or FTA must obtain from the project sponsor and/or operator enforceable written commitments to implement any required project-level control or mitigation measures, prior to making a project-level conformity determination in a $PM_{2.5}$ nonattainment or maintenance area. These control or mitigation measures may be a condition of either a National Environmental Policy Act (NEPA) approval or a conformity determination for a transportation plan or TIP or be included in the design concept and scope of the project that is used in the regional emissions analysis required by §§ 93.118 or 93.119 of the conformity rule, or used in the project-level hot-spot analysis required by § 93.116. These measures may be applicable during construction and/or operation of the project. Such measures would already be applicable to such projects through the mechanisms cited above; however, including commitments to them in conformity determinations will provide an additional enforcement tool.

Changes to other related existing requirements: Today's proposal also includes minor clarifications with respect to $PM_{2.5}$ to various parts of the current conformity rule that are consistent with existing CO and PM_{10} hot-spot analysis requirements. For example, EPA has proposed to add $PM_{2.5}$ to the current rule's ''hot-spot analysis'' definition in § 93.101. EPA proposes that this and the other minor clarifications in today's proposed regulatory text would be finalized under any option that would require $PM_{2.5}$ hot-spot analyses.

B. Why Are We Proposing These Options?

1. General

EPA believes it is important to consider the full range of options for addressing localized $PM_{2.5}$ concentrations which may cause or contribute to any new violation of the $PM_{2.5}$ standard; increase the frequency or severity of any existing violation; or delay timely attainment of the standard. In developing this supplemental proposal, EPA considered several factors:

- The Clean Air Act conformity requirements for individual transportation projects;
- The current scientific understanding of $PM_{2.5}$ hot-spots and public health effects;
- The feasibility of implementing proposed options; and
- The impact of proposed options on state and local resources.

The following paragraphs outline how these factors relate to the proposed options.

First, EPA believes that any option that is selected in the final rule must ensure that all federally funded and approved transportation projects in $PM_{2.5}$ areas are consistent with Clean Air Act requirements. Section 176(c)(1)(B) of the Clean Air Act states that federally-supported transportation projects must not ''cause or contribute to any new violation of any standard in any area; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.'' While these statutory requirements apply at all times for highway and transit project conformity determinations, as noted in the November 3, 2003 proposal, Section 176 (c)(3)(B)(ii) only specifically requires hot-spot analysis for projects in CO nonattainment areas and therefore, EPA has discretion to decide if hot-spot analyses are necessary to protect air quality in particulate matter nonattainment and maintenance areas. EPA received comments concerning this interpretation of the Agency's statutory authority during the comment period following the November 3, 2003 proposal and invites further comments on this matter.

EPA also considered what is currently known about the possibility that transportation-related $PM_{2.5}$ hot-spots exist in the development of the November 2003 proposal and today's supplemental proposal. In the November 3, 2003 proposal EPA indicated that the Agency was not certain that hot-spots will occur, or that in the event such hot-spots are confirmed, that requiring a qualitative hot-spot analysis for every FHWA and FTA project in $PM_{2.5}$ nonattainment and maintenance areas would provide an environmental benefit due to the

regional nature of $PM_{2.5}$ and the significant role of secondary formation of these fine particles.

Understanding whether transportation projects can result in $PM_{2.5}$ hot-spots and if so, under what circumstances, provides a basis for considering whether explicit hot-spot reviews must be required. The state of scientific research continues to evolve on the relationship between individual transportation projects and $PM_{2.5}$ air quality. EPA noted in the November 2003 proposal that most of the research studies that had been reviewed at that time indicated that concentrations of some components of $PM_{2.5}$ increase near heavily traveled roadways. In the November 2003 proposal, EPA noted its review of a number of key studies that represent the range of available research on the impact of on-road mobile source emissions of particles on air quality near roadways. The majority of these studies indicate that concentrations of some components of $PM_{2.5}$, such as black carbon and ultrafine particles, increase near roadways. However, many of these studies did not measure $PM_{2.5}$ directly. Several studies concluded that on-road sources were one of several contributors to the concentrations measured near roadways. Please see the November 2003 proposal for additional information on these and other studies (68 FR 62713).

EPA has also considered information that has become available since the November 2003 proposal and has further considered the information that was described in the November 2003 proposal. For example, one new study published this year examines changes in traffic patterns associated with a single transportation project that can result in statistically significant differences in $PM_{2.5}$ mass concentrations measured along affected roadways (Burr, *et al.*, 2004). Some commenters also provided other information regarding $PM_{2.5}$ hot-spots for EPA's consideration. The information available prior to the November 2003 proposal did not measure $PM_{2.5}$ directly and did not isolate the effects of new transportation projects. However, both this information as well as the most recent information does indicate a potential for higher localized emissions and $PM_{2.5}$ concentrations near transportation projects. EPA is considering the context for how this information was developed, including how localized emissions increases and existing background concentrations relate to the potential for localized violation of the $PM_{2.5}$ standard. We invite others to submit data or research relevant to the existence of transportation-related hot-spots during the comment period for this supplemental proposal. Please read C. of this section for further information.

EPA also considered what would be known about the potential for $PM_{2.5}$ hot-spots in individual $PM_{2.5}$ nonattainment areas, and as a consequence, the feasibility of implementing any proposed option to meet statutory requirements before and after $PM_{2.5}$ SIP submission. We invite state and local agencies to comment on the feasibility of implementing all of the proposed options, including what state or local information would be available for implementation purposes as appropriate.

In addition, EPA will be considering in the final rule the impact of our new diesel fuel and engine standards (January 18, 2001, 66 FR 5002) for the necessity of applying any of the proposed options. Such standards are expected to significantly impact the amount of particulate emissions that will be emitted by new diesel vehicles, and consequently may impact the potential for $PM_{2.5}$ transportation-related hot-spots.

2. $PM_{2.5}$ Hot-Spot Analyses Before SIP Submission

EPA has proposed several options for $PM_{2.5}$ hot-spot analyses prior to SIP submission (Options 1–5). As stated above, our understanding of transportation-related $PM_{2.5}$ and the potential of $PM_{2.5}$ hot-spots will continue to develop, especially during the time period when conformity first applies for the $PM_{2.5}$ standard.

EPA is again proposing Options 1 and 2 which do not require any explicit $PM_{2.5}$ hot-spot analysis for any project before $PM_{2.5}$ SIP submission in $PM_{2.5}$ nonattainment and maintenance areas. Please see the November 2003 proposal (68 FR 62712–62713) for further information on these options.

EPA has also proposed to apply the existing rule's PM_{10} hot-spot requirements to $PM_{2.5}$ areas before $PM_{2.5}$ SIP submission (Option 3). EPA believes that this option would meet statutory requirements since it relies on an existing interpretation that has already been implemented under the current conformity rule. In the November 24, 1993 conformity rule (58 FR 62188), EPA promulgated the existing conformity requirements for CO and PM_{10} hot-spot analyses. A hot-spot analysis is currently required for all non-exempt federal projects in CO and PM_{10} nonattainment and maintenance areas, regardless of whether or not a SIP has been submitted. Quantitative hot-spot analyses under the current rule are required for projects that meet specific criteria in the conformity rule, rather than based on criteria identified in a SIP.

The current conformity rule requires hot-spot analyses for all non-exempt FHWA/FTA projects at all times in PM_{10} areas, since we believed that emissions produced by individual highway and transit projects in these areas could potentially result in a new air quality violation or worsen an existing violation. Option 3 relies on this same rationale.

Applying the current rule's provisions in $PM_{2.5}$ areas would provide an environmentally conservative approach to any uncertainty regarding the potential or prevalence of $PM_{2.5}$ hot-spots, since some type of hot-spot analysis would be completed for every non-exempt FHWA/FTA project in $PM_{2.5}$ areas. Although state and local agencies have developed boundary recommendations for $PM_{2.5}$ designations, SIPs for individual nonattainment areas will not be developed for three years after designations. As a result, information regarding localized $PM_{2.5}$ air quality challenges in individual areas may not be available for most areas. EPA will consider in the final rule whether sufficient information is available to confidently confirm or eliminate the possibility of $PM_{2.5}$ hot-spots for categories of project types or locations, and as a result, if explicit hot-spot reviews are necessary before $PM_{2.5}$ SIP submission.

EPA is also proposing Options 4 and 5 for the time period prior to $PM_{2.5}$ SIP submission, due to the evolving nature of our understanding of $PM_{2.5}$ air quality issues. These options would apply current PM_{10} hot-spot requirements with respect to $PM_{2.5}$ depending on whether or not worsening $PM_{2.5}$ concentrations would result in a new violation or increased severity or frequency of an existing violation of the $PM_{2.5}$ standard in an area prior to $PM_{2.5}$ SIP submission. These options would rely on the proposed interpretation stated in the November 2003 proposal (68 FR 62713): Clean Air Act section 176(c)(1)(B) requirements could be met as long as explicit reviews are performed at locations identified in the $PM_{2.5}$ SIP as susceptible to $PM_{2.5}$ hot-spots. If hot-spots are found not to be a concern (Option 4) for any projects in a given area prior to $PM_{2.5}$ SIP submission, then statutory requirements could be met in these areas without any explicit hot-spot review. Conversely, if hot-spots are found to be a concern (Option 5) in a given area, then all project-level conformity determinations in these areas should include explicit

hot-spot reviews to ensure that statutory requirements are met. Both of these options would allow EPA and states to target hot-spot requirements in $PM_{2.5}$ nonattainment areas where hot-spots may or may not be an air quality concern.

As described in A.2. of this section, EPA is requesting comment on whether state and local air agencies will have the necessary data and other information to make the hot-spot findings described in Options 4 and 5 prior to $PM_{2.5}$ SIP submission. The appropriateness and feasibility of these options—that is, the ability to argue that section 176(c)(1)(B) requirements are met under these options—depends on whether well-considered, informed findings will be possible prior to $PM_{2.5}$ SIP submission.

3. $PM_{2.5}$ Hot-Spot Analyses After SIP Submission

EPA has also proposed options for $PM_{2.5}$ hot-spot analyses after SIP submission (Options A–C). Option C would extend the existing rule's PM_{10} hot-spot requirements (with a minor addition) to $PM_{2.5}$ areas after $PM_{2.5}$ SIP submission. Similar to Option 3 for the time period before $PM_{2.5}$ SIPs, EPA concludes that Option C would meet statutory requirements since it relies on existing rationale for the current conformity rule.

EPA also notes that extending the current rule's provisions for PM_{10} hot-spot analyses to $PM_{2.5}$ areas would ensure that potential transportation-related $PM_{2.5}$ hot-spots for all areas are addressed, especially in cases where it is not possible to determine through the SIP process what the potential for localized $PM_{2.5}$ violations would be in a given nonattainment or maintenance area. As noted previously, EPA will consider in the final rule the potential existence of $PM_{2.5}$ hot-spots for transportation projects, and whether explicit hot-spot reviews will be needed to meet Clean Air Act requirements. Option C would require state and local resources be used for all FHWA/FTA non-exempt projects in $PM_{2.5}$ areas, although EPA is proposing flexibility to require more intensive quantitative hot-spot reviews only for a subset of projects.

EPA also proposed Option B to require quantitative $PM_{2.5}$ hot-spot analyses only at types of project locations identified as a localized air quality concern in a given $PM_{2.5}$ SIP. When the SIP identifies such locations, a quantitative hot-spot analysis would be completed for affected projects. No qualitative analyses would be required for projects in other types of locations, or in $PM_{2.5}$ areas where the SIP does not identify types of locations as a localized $PM_{2.5}$ air quality concern. Under Option B, EPA is proposing quantitative hot-spot analyses only for projects at locations identified in the SIP as a localized concern, since EPA believes that if a SIP identifies such a project location as problematic, then a more thorough examination of the localized impacts of transportation projects at such locations is necessary to ensure that the SIP's purpose and Clean Air Act conformity requirements are met.

As stated in the November 2003 proposal, Option B is consistent with the purpose of conformity, which is to ensure that federally funded or approved transportation projects are consistent with the SIP in a given nonattainment or maintenance area. Section 176(c)(1)(A) requires ''conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards * * *.'' Under this option, the SIP would define the types of locations where transportation projects are a localized $PM_{2.5}$ concern, and therefore, when explicit hot-spot reviews are necessary to meet statutory requirements.

For Option B, EPA is considering whether $PM_{2.5}$ SIPs can be developed so potential transportation-related hot-spot locations are defined for each $PM_{2.5}$ nonattainment and maintenance area. This option would be feasible in the case where sufficient information exists that allows a state to specify susceptible locations for $PM_{2.5}$ hot-spots are or are not a concern. However, there may be other cases where it is unclear whether susceptible locations for hot-spots exist, or where there is a potential for localized $PM_{2.5}$ violations but it is difficult to specify which project locations could create hot-spots. EPA is requesting comment on whether such cases could occur in future $PM_{2.5}$ areas, and whether other proposed options would be more appropriate in such cases after a $PM_{2.5}$ SIP is submitted.

EPA also requests comment on how the proposed options should be implemented in cases where the latest information available on the potential for $PM_{2.5}$ hot-spots is not reflected in the $PM_{2.5}$ SIP. For example, suppose an attainment demonstration for the $PM_{2.5}$ standard is developed that specifies that there are no project locations susceptible to $PM_{2.5}$ hot-spots. However, after the attainment demonstration is submitted, information becomes available outside the SIP process that indicates that there may be potential transportation-related hot-spot locations. One may argue that in such a case under Option B $PM_{2.5}$ SIPs would need to be updated in a timely manner to reflect new information so that project-level conformity determinations could be made that meet statutory requirements. On the other hand, there may be arguments to allow the SIP process to evaluate any new information prior to its use in the conformity process.

EPA has committed to issue SIP guidance under this option if it is finalized. Due to the evolving nature of our understanding of $PM_{2.5}$, there may be challenges to any guidance document that is developed in the near future. EPA requests in today's action further comment on whether state and local air quality agencies will have the necessary local information and resources to specify in $PM_{2.5}$ SIPs which project locations are a potential $PM_{2.5}$ hot-spot concern, in order to support Option B and provide flexibility in the conformity process.

State and local agencies may identify types of locations in each $PM_{2.5}$ SIP that may increase or decrease the kinds of projects requiring quantitative hot-spot analyses, as compared to the current conformity rule's criteria for such PM_{10} hot-spot analyses. Ultimately, EPA anticipates that this option would likely result in fewer total projects having some type of $PM_{2.5}$ hot-spot review as compared to the current conformity rule's requirements, since not all $PM_{2.5}$ areas may have future $PM_{2.5}$ SIPs that identify hot-spots as a concern.

EPA is again proposing options for not requiring any explicit $PM_{2.5}$ hot-spot analysis for any project after $PM_{2.5}$ SIP submission (Option A). As stated in B.2. of this section, this option could be finalized based on the discussion of this option in the November 3, 2003 proposal.

4. Specific Analysis Requirements

EPA continues to believe it has discretion both to decide if hot-spot analyses are necessary and to establish the level of any $PM_{2.5}$ hot-spot analysis that would be required for transportation projects. For example, the options that involve applying the existing conformity rule's PM_{10} requirements with respect to $PM_{2.5}$ would require quantitative hot-spot analyses only for certain projects. Qualitative hot-spot analyses would be completed under these options for other projects that are not subject to quantitative analyses. Applying the current conformity rule's approach for requiring dispersion modeling only at certain project locations would

streamline $PM_{2.5}$ hot-spot reviews and utilize state and local resources in an efficient and reasonable manner while still satisfying Clean Air Act requirements.

EPA's minor proposal to add a new criterion under Option C to § 93.123(b)(1) of the regulatory text for when PM quantitative hot-spot analyses are required would ensure that Clean Air Act and SIP goals are met. That is, requiring quantitative hot-spot analyses to also be completed for types of project locations that the SIP identifies will support the SIP's goals for an individual area in those cases where a state has the information to identify specific types of locations. Where a state does not have such information, EPA believes that the remaining three criteria for when quantitative analyses are completed sufficiently cover the cases where it is most likely to have a hot-spot occur.

EPA notes that this minor proposal would be consistent with a similar criterion in § 93.123(a)(1)(i) of the existing rule's requirements for quantitative CO hot-spot analyses. This criterion requires quantitative CO hot-spot analyses ''[f]or projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation; * * *.''

5. Other Requirements

Finally, EPA is proposing to apply the current conformity rule's other provisions for conducting hot-spot analyses with respect to $PM_{2.5}$ for any option that requires a $PM_{2.5}$ hot-spot analysis. As described in A.5. of this section, these minor proposed changes would not substantively change these provisions of the current conformity rule (*e.g.*, §§ 93.123(c) and 93.125(a)). These proposed changes would allow EPA to implement any $PM_{2.5}$ hot-spot requirement in the final rule, if necessary.

C. Request for $PM_{2.5}$ Hot-Spot Information

EPA again invites commenters to submit studies or data regarding $PM_{2.5}$ hot-spots during the comment period for this supplemental proposal. All comments and information submitted for the November 2003 proposal and today's action will be considered when EPA develops the final rule that addresses $PM_{2.5}$ hot-spot requirements.

IV. PM_{10} Hot-Spot Analyses

A. What Are We Proposing?

1. Background

EPA is proposing several options for PM_{10} hot-spot analyses in today's action for project-level conformity determinations in PM_{10} nonattainment and maintenance areas. As described in Section III. of today's action, a highway or transit project subject to transportation conformity provisions of the Clean Air Act must not cause or contribute to any new violations of the air quality standard, increase the frequency or severity of existing violations or delay timely attainment of any standard or interim emission reductions or milestones.

Comments can be submitted on all options during the comment period for this supplemental proposal. The options below are listed in terms of what would be required for project-level conformity determinations before and after a PM_{10} SIP is submitted in a given PM_{10} nonattainment or maintenance area.

The following paragraphs describe the November 5, 2003 proposal's PM_{10} hot-spot options along with new options proposed for comment today. Today's proposed regulatory text combines various $PM_{2.5}$ and PM_{10} hot-spot options as illustrative examples, since common sections and paragraphs of the conformity rule would be affected under the supplemental proposal. However, EPA believes that any combination of the proposed $PM_{2.5}$ or PM_{10} hot-spot options could be included in the final rule.

As described in Section III., the existing conformity rule requires some type of hot-spot analyses for all FHWA/FTA non-exempt projects in CO and PM_{10} nonattainment and maintenance areas (see 40 CFR 93.116 and 93.123). These requirements currently apply for all project-level conformity determinations that occur before and after a SIP is submitted for these standards.

2. PM_{10} Hot-Spot Analyses Prior to SIP Submission

In today's supplemental proposal, EPA is proposing the following PM_{10} hot-spot options for project-level conformity determinations that occur prior to the submission of a PM_{10} SIP:

- *Option 1:* Retain the existing conformity rule's PM_{10} hot-spot analysis requirements in all PM_{10} areas.
- *Option 2:* Apply the existing conformity rule's PM_{10} hot-spot analysis requirements, unless the EPA Regional Administrator or state air agency finds that localized PM_{10} violations are not a concern for a given PM_{10} area;
- *Option 3:* Only apply the existing conformity rule's PM_{10} hot-spot analysis requirements, if the EPA Regional Administrator or state air agency finds that localized PM_{10} violations are a concern for a given PM_{10} area; or
- *Option 4:* Delete the current PM_{10} hot-spot analysis requirements from the conformity rule and impose no hot-spot analysis requirements.

For Options 2 and 3, EPA intends localized PM_{10} violations to be a concern if Clean Air Act requirements for projects are not met, that is, if projects create new or worsen existing PM_{10} violations. Although EPA has not proposed specific language in § 93.123(b) for Options 3 and 4, EPA has described these options sufficiently in this preamble to include either or both of them in the final rule, if selected.

For Options 2 and 3, EPA requests comment today on whether state and local agencies that do not already have established PM_{10} SIPs have information available to make such findings (''hot-spot findings''), and what type of information would be available in the future for those limited number of PM_{10} areas without PM_{10} SIPs. An EPA or state hot-spot finding that localized PM_{10} violations are or are not a concern prior to PM_{10} SIP submission would be based on a case-by-case review of local factors for a given PM_{10} area. For example, such a review could consider the following local factors: PM_{10} monitoring data and proximity to the PM_{10} standard, future modeling projections and likelihood of new or worsening localized PM_{10} violations at transportation-related project locations, the prevalence of heavy-duty diesel vehicles at certain types of locations (*e.g.*, highly congested intersections or large transit stations where significant traffic and engine idling occurs), site-specific terrain, meteorology, etc.

The proposed rule would require hot-spot findings under the proposed options to be made only after discussions with federal, state, and local air quality and transportation agencies through the interagency consultation process for a given PM_{10} nonattainment area. A hot-spot finding would be made through a letter to the relevant state and local air quality and transportation agencies, MPO(s), FHWA, FTA, and EPA (in the case of a state air agency finding). A hot-spot finding under the proposed options would not be completed through EPA's adequacy process for submitted SIPs with motor vehicle emissions budgets, as noted in Section III.A.2. of today's supplemental proposal.

3. PM_{10} Hot-Spot Analyses After SIP Submission

EPA is proposing the following PM_{10} hot-spot options for project-level conformity determinations that occur after PM_{10} SIP submission:

- *Option A:* Retain the existing conformity rule's PM_{10} hot-spot analysis requirements for FHWA/FTA non-exempt projects in all PM_{10} areas with one minor addition, as described below;
- *Option B:* Only require quantitative PM_{10} hot-spot analyses for projects at those types of locations that the PM_{10} SIP for a given area identifies as a localized PM_{10} air quality concern. No qualitative analyses would be required for projects in other types of locations, or in PM_{10} areas where the SIP does not identify types of locations as a localized PM_{10} air quality concern; or
- *Option C:* Do not apply any PM_{10} hot-spot analysis requirements for any PM_{10} area and delete the current PM_{10} requirements from the conformity rule.

EPA notes that all of these options were represented in the November 2003 proposal. As described in Section III. for $PM_{2.5}$ PM_{10} quantitative hot-spot analyses under Option B would only be required for projects at the types of locations identified as a concern in the PM_{10} SIP; no qualitative hot-spot analyses would be done for all other projects. This option would not require some type of hot-spot analyses for all projects in the PM_{10} nonattainment or maintenance area, as is currently required. If EPA finalizes Option B, we would provide guidance on how to identify locations where transportation-related PM_{10} hot-spots may exist. The majority of PM_{10} areas already have an attainment demonstration or a maintenance plan; therefore, SIP revisions may be necessary under Option B to identify types of locations where quantitative analyses must be performed.

As described in Section III. of today's notice, examples of types of project locations include:

- Highly congested intersections,
- Large transit stations where significant traffic and engine idling occurs,
- Long or steep grades, or
- Monitors where the PM_{10} standard has been exceeded or violated.

EPA requests comment on the above examples, and requests further information regarding other types of project locations where potential PM_{10} hot-spots could occur in a given area.

Minor change to quantitative hot-spot requirements: For Option A, EPA is proposing one minor change to the existing conformity rule's requirements for PM_{10} hot-spot analyses after PM_{10} SIPs are submitted. The proposal would add another criterion for when quantitative (rather than qualitative) analyses would be performed—in those types of project locations that the PM_{10} SIP identifies as a PM_{10} hot-spot concern. This criterion would only be relevant after the PM_{10} SIP is submitted. If EPA finalizes this minor change, it would apply to both $PM_{2.5}$ and PM_{10} hot-spot analyses. This change is also being proposed in Section III. of today's action for a similar option for $PM_{2.5}$ analyses. Regulatory text for this minor change is in § 93.123(b)(1).

Section 93.123(b)(1) currently requires quantitative PM_{10} hot-spot analyses for the following types of transportation projects:

- Projects which are located at sites at which violations have been verified by monitoring data;
- Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and
- New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

EPA proposes to make a minor change to § 93.123(b)(1)(iii) to clarify that quantitative analyses would be required for such projects that *significantly* increase the number of diesel vehicles, so that quantitative analyses are not required for insignificant vehicle increases with de minimis localized emissions increases. The proposed change may also cover the cases where the number of vehicles increases but emissions do not increase because the added vehicles are cleaner (*e.g.*, retrofitted diesel vehicles).

EPA notes that today's action would not change § 93.123(b)(2) of the current rule for relevant options, which requires a qualitative hot-spot analysis of local factors for all other projects, rather than dispersion modeling.

Section 93.123(b)(3) currently requires that the consultation process be used to identify the specific cases in a given nonattainment or maintenance area under which PM_{10} quantitative hot-spot analyses are performed, and addresses categorical conformity determinations for certain transit projects and FTA actions in PM_{10} areas. A categorical conformity determination under the existing conformity rule and this proposal allows FTA to determine that a quantitative hot-spot analysis is not needed for a particular project if there is modeling that shows that such a project will not cause or contribute to new or worsening localized violations. Today's proposal does not substantively change § 93.123(b)(3) for FTA actions on certain transit projects, and EPA is not requesting comment on this existing flexibility.

However, today's proposal would modify § 93.123(b)(3) of the current conformity rule to allow FHWA to also make a categorical $PM_{2.5}$ or PM_{10} conformity determination on certain roadways and intersections based on appropriate modeling of various configurations and activity levels. As described above, the current rule provides for such FTA categorical conformity determinations for only certain transit projects in PM_{10} areas. We request comment on allowing FHWA to make a categorical determination without additional PM_{10} hot-spot analyses if it believes this would meet Clean Air Act requirements. EPA also requests information on what types of roadway and intersection projects would be appropriately covered by this proposal. If finalized, EPA and DOT would consult on the development of additional guidance on the implementation of such a provision. See Section III.A.4. of today's proposal for further information.

4. Quantitative PM_{10} Hot-Spot Analyses and Future EPA Guidance

If EPA finalizes an option that would require quantitative PM_{10} hot-spot analyses, we would provide guidance and appropriate models for carrying out such analyses in a timely manner.[2] Section 93.123(b)(4) of the current rule does not require any quantitative PM_{10} hot-spot analyses until EPA releases quantitative modeling guidance and announces in the **Federal Register** that quantitative modeling requirements are in effect. EPA would consult with conformity stakeholders when developing PM_{10} quantitative guidance.

5. Other Requirements

For options that require PM_{10} hot-spot analyses, EPA is proposing to continue to apply the general requirements for such analyses in §§ 93.123(c), 93.125(a), and other provisions of the current conformity rule for all PM_{10} hot-spot analyses. EPA is not proposing any substantive changes to these requirements. See Section III. of this

[2] PM_{10} qualitative hot-spot guidance has already been issued, titled, ''Federal Highway Administration Guidance for Qualitative Project Level ''Hot Spot'' Analysis in PM–10 Nonattainment and Maintenance Areas,'' September 2001. This guidance can be downloaded from the following website: *http://www.epa.gov/otaq/transp/conform/policy.htm*

preamble or the proposed regulatory text for further general information regarding these requirements.

B. Why Are We Proposing These Options?

1. General

EPA considered the following factors in developing the PM_{10} hot-spot options in the November 2003 proposal and today's action:

- The Clean Air Act conformity requirements for individual transportation projects in PM_{10} areas;
- The current scientific understanding of PM_{10} hot-spots and public health effects;
- The feasibility of implementing proposed options; and
- The impact of proposed options on state and local resources.

As stated in the November 2003 proposal, EPA believes it is important to re-evaluate the need for hot-spot analyses for PM_{10} nonattainment and maintenance areas. EPA is addressing hot-spots in PM_{10} areas, in addition to $PM_{2.5}$ areas in this SNPRM, because of the similarity between sources of these two pollutants and the similarity of the requirements. For example, both types of particulate matter result from tailpipe emissions, as well as brake and tire wear, and in some areas, road dust. PM_{10} includes particles that are 2.5 microns in diameter and smaller, as well as particles that range from 2.5 microns to 10 microns. In addition, because we are soliciting comment on a range of options for hot-spot analyses in $PM_{2.5}$ areas, EPA believes it is reasonable to seek comment on a similar range of options for hot-spot analyses in PM_{10} areas. We are soliciting input to guide our decision on the proposed options both before and after a PM_{10} SIP is submitted. The following paragraphs outline how the above factors relate to the proposed options.

When the conformity rule was promulgated in 1993, EPA interpreted Clean Air Act section 176(c)(1)(B) to require PM_{10} hot-spot analyses because of the requirement to ensure that transportation activities do not create new violations, worsen existing violations or delay timely attainment of the air quality standard (January 11, 1993, 58 FR 3776). Any option that is selected in the final rule must be consistent with these Clean Air Act requirements, which apply at all times for highway and transit project conformity determinations.

EPA's developing understanding of potential PM_{10} hot-spots is one of the factors that needs to be considered for applying the proposed options. EPA believes it is appropriate to focus conformity resources where air quality issues are significant and need to be in place to address Clean Air Act requirements. To that end, EPA will consider information that was available when the original conformity rule was developed, as well as new information that is submitted through the rulemaking process or has otherwise become available. For example, in 1993, EPA believed that typically sized bus terminals or transfer points would not create PM_{10} hot-spots, however, we decided that it was practical to require a determination to that effect to ensure that Clean Air Act requirements were met. We also believed at that time that direct PM_{10} emissions would be capable of causing violations only in conditions of unusually heavy diesel truck/bus traffic and limited dispersion, such as street canyons (January 11, 1993, 58 FR 3780). On the other hand, EPA may not have fully considered the role of re-entrained road dust in contributing to potential PM_{10} hot-spots. EPA will consider all past and current information on the potential for PM_{10} hot-spots in the development of the final rule.

In addition, EPA will be considering in the final rule the impact of our new diesel fuel and engine standards (January 18, 2001, 66 FR 5002) for the necessity of applying any of the proposed options. Such standards are expected to significantly impact the amount of particulate emissions that will be emitted by new diesel vehicles, and consequently may impact the potential for PM_{10} transportation-related hot-spots.

Understanding the potential for PM_{10} hot-spots provides a basis for determining when explicit hot-spot reviews must be required. As indicated in the November 3, 2003 proposal, section 176(c)(3)(B)(ii) specifically requires hot-spot analyses for projects only in CO nonattainment areas.

EPA also considered the feasibility of implementing any proposed option to meet statutory requirements before and after PM_{10} SIP submission. We invite state and local agencies to comment on the feasibility of implementing all of the proposed options, including what state or local information would be available for implementation purposes.

2. PM_{10} Hot-Spot Analyses Before SIP Submission

EPA has proposed to apply the existing rule's PM_{10} hot-spot requirements to PM_{10} areas before PM_{10} SIP submission (Option 1). EPA believes that this option would meet statutory requirements since it relies on the existing interpretation for the current conformity rule. In the November 24, 1993 conformity rule (58 FR 62188), EPA promulgated the existing conformity requirements for PM_{10} hot-spot analyses. Section 93.116 of the current conformity rule requires an explicit PM_{10} hot-spot review to be completed for all non-exempt federal projects in PM_{10} nonattainment and maintenance areas, regardless of whether or not a SIP has been submitted. EPA believed that emissions produced by individual highway and transit projects in PM_{10} nonattainment and maintenance areas could potentially result in a new air quality violation or worsen an existing violation. Option 1 would continue to rely on this same rationale.

EPA is also proposing today Options 2 and 3 to apply current PM_{10} hot-spot requirements depending on whether or not new or worsening localized PM_{10} violations could occur in a given area prior to PM_{10} SIP submission. These options would rely on the proposed interpretation stated in the November 2003 proposal (68 FR 62713): Clean Air Act section 176(c)(1)(B) requirements could be met as long as explicit reviews are performed at locations susceptible to PM_{10} hot-spots. If hot-spots are found not to be a potential concern (Option 2) in a given area, then EPA believes that statutory requirements could be met in these areas without an explicit hot-spot review. Conversely, if potential hot-spots are found to be a concern (Option 3) in a given area, then all project-level conformity determinations in these areas should include explicit hot-spot reviews to ensure that statutory requirements are met. Both of these options would allow EPA and states to target hot-spot requirements in PM_{10} nonattainment areas where hot-spots may or may not be an air quality concern.

Commenters should consider the practical impact of all of the options that are being proposed for the time period prior to PM_{10} SIP submission. Since most PM_{10} nonattainment and maintenance areas already have submitted or approved PM_{10} SIPs, the proposed options may impact a small number of PM_{10} areas. EPA requests information on the appropriateness of the proposed options in any PM_{10} areas without SIPs, including whether there are unique circumstances of these areas that would be relevant to the potential for PM_{10} hot-spots and necessity of project-level conformity analyses.

As described in A.2. of this section, EPA is requesting comment on whether state and local air agencies that have not yet established PM_{10} SIPs will have the

necessary information to make the hot-spot findings described in Options 2 and 3. The appropriateness and feasibility of these options in meeting Clean Air Act requirements depends on whether well-considered, informed findings will be possible prior to PM_{10} SIP submission.

EPA is again proposing Option 4 to not require any explicit PM_{10} hot-spot analysis for any project before PM_{10} SIP submission in PM_{10} nonattainment and maintenance areas. See the November 5, 2003 proposal (68 FR 62713—62714) for further information.

3. PM_{10} Hot-spot Analyses After SIP Submission

EPA continues to consider the November 2003 proposal's options for PM_{10} hot-spot analyses after SIP submission (Options A–C). Option A would continue to apply the existing rule's PM_{10} hot-spot requirements (with a minor addition) after PM_{10} SIP submission. Similar to Option 1 for the time period before PM_{10} SIPs, EPA concludes that Option A would meet statutory requirements since it relies on existing rationale for the current conformity rule.

Like similar $PM_{2.5}$ hot-spot options discussed in Section III., EPA notes that retaining the current PM_{10} hot-spot requirements would ensure that potential transportation-related hot-spots for all areas are addressed, especially in cases where it is not possible to determine through the SIP process the potential for localized PM_{10} violations in a given nonattainment or maintenance area. EPA will consider in the final rule the potential existence of PM_{10} hot-spots for transportation projects, and whether explicit hot-spot reviews will be needed to meet Clean Air Act requirements. Option A would require state and local resources be used for all FHWA/FTA non-exempt projects in PM_{10} areas, although the existing conformity rule and today's proposal streamlines hot-spot analyses for projects that do not require quantitative analyses.

EPA also proposed Option B to require quantitative PM_{10} hot-spot analyses only at types of project locations identified as a localized air quality concern in a given PM_{10} SIP. When the SIP identifies such locations, a quantitative hot-spot analysis would be completed for affected projects. No qualitative analyses would be required for projects in other types of locations, or in PM_{10} areas where the SIP does not identify types of locations as a localized PM_{10} air quality concern. Under Option B, EPA is proposing quantitative hot-spot analyses only for projects at locations identified in the SIP as a localized concern, since EPA believes that if a SIP identifies such a project location, then a more thorough examination of the localized impacts of projects at such locations is necessary to ensure that the SIP's purpose and Clean Air Act conformity requirements are met.

As indicated in the November 2003 proposal, Option B is consistent with the purpose of conformity, which is to ensure that federally funded or approved transportation projects are consistent with the SIP in a given nonattainment or maintenance area. See Section III.B. for more information regarding similar rationale for $PM_{2.5}$.

However, it is unclear how Option B would be implemented in current PM_{10} nonattainment and maintenance areas since most PM_{10} areas may not have considered the potential for PM_{10} hot-spots during the development of existing PM_{10} SIPs. In such cases, should existing SIPs be revised to consider potential PM_{10} hot-spots? Should states evaluate the potential for PM_{10} hot-spots outside the SIP process? How do the practical circumstances of Option B affect the other proposed PM_{10} options? EPA requests comments on all of these questions.

Like $PM_{2.5}$ SIPs, EPA is also considering whether PM_{10} SIPs can be developed so potential transportation-related hot-spot locations are defined for each PM_{10} nonattainment and maintenance area. EPA is requesting comment on whether such cases could occur in PM_{10} areas, and whether other proposed options would be more appropriate in such cases after a PM_{10} SIP is submitted. EPA also requests comment on how the proposed options should be implemented in cases where the latest information available on the potential for PM_{10} hot-spots is not reflected in the PM_{10} SIP. See Section III.B.3. of today's proposal for further information.

EPA has committed to issue SIP guidance under this option if it is finalized. EPA requests further comment on whether state and local air quality agencies will have the necessary local information and resources to specify in PM_{10} SIPs which project locations are a potential PM_{10} hot-spot concern, in order to support Option B and provide flexibility in the conformity process.

State and local agencies may identify types of locations in each PM_{10} SIP that may increase or decrease the kinds of projects requiring quantitative hot-spot analyses, as compared to current conformity requirements. EPA anticipates that this option would likely result in fewer total projects having some type of PM_{10} hot-spot review as compared to the current conformity rule's requirements, since not all PM_{10} areas may have future PM_{10} SIPs that identify hot-spots as a concern.

Finally, EPA is again proposing options for not requiring any explicit PM_{10} hot-spot analysis for any project after PM_{10} SIP submission (Option C), for reasons cited above and in the November 2003 proposal.

4. Specific Analysis Requirements and Other Requirements

EPA continues to believe it has discretion to define what level of PM_{10} hot-spot analysis would be required for proposed options that involve such analyses, as described in Section III. of today's proposal. EPA believes that applying the current conformity rule's approach would streamline hot-spot reviews and utilize state and local resources in an efficient and reasonable manner while still satisfying Clean Air Act requirements.

Finally, EPA has proposed to add a new criterion for when quantitative PM_{10} hot-spot analyses are completed after a PM_{10} SIP is submitted for Option A. As stated in Section III.B., EPA believes that if Option A is finalized for PM_{10} hot-spot requirements, quantitative analyses should also be done if the PM_{10} SIP identifies certain types of locations as a PM_{10} hot-spot concern. Since the primary intent of the Clean Air Act is to ensure consistency between transportation decisions and SIP air quality objectives, it is appropriate to require more intensive hot-spot reviews in cases where the SIP specifically identifies a type of transportation project location as having the potential to increase local emissions and worsen air quality. EPA notes that this minor proposal would be consistent with a similar criterion in § 93.123(a)(1)(i) of the existing rule's requirements for quantitative CO hot-spot analyses.

EPA is also proposing to retain the existing conformity rule's general provisions for conducting PM_{10} hot-spot analyses for those options that would apply the existing rule's requirements. Examples would include related provisions in §§ 93.101, 93.123, and 93.125 of the conformity rule.

C. Request for PM_{10} Hot-Spot Information

EPA again invites commenters to submit studies or data regarding PM_{10} hot-spots during the comment period for this supplemental proposal. All information submitted for the November 2003 proposal and today's action will be considered when EPA develops the final

rule that addresses PM_{10} hot-spot requirements.

V. Minor Change for Compliance With $PM_{2.5}$ SIP Control Measures

Today EPA is proposing a small change to the footnote at the bottom of Table 2 in § 93.126. Section 93.126 is titled, ''Exempt projects'' and Table 2 lists these projects under several different headings. Projects listed in the table are exempt from the requirement to determine conformity, and may proceed even in the absence of a conformity transportation plan and TIP.

Today's proposed change would add ''and $PM_{2.5}$'' after ''PM_{10}'' in the footnote at the bottom of Table 2. Currently, the footnote reads, ''Note: In PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.'' However, $PM_{2.5}$ areas also need to be included in this note to make § 93.126 consistent with § 93.117. In the July 1, 2004, final rule, EPA updated § 93.117, which discusses compliance with control measures in PM areas, to include $PM_{2.5}$ as well as PM_{10}. EPA should have updated the footnote in § 93.126 in the July 1, 2004 rule; we are proposing to correct this oversight in today's action. With this change, projects on the exempt list in § 93.126 would be exempt in a $PM_{2.5}$ area only if they are in compliance with control measures in the applicable SIP.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review and the requirements of the Executive Order. The Order defines significant ''regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this supplemental proposal is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to review by the Office of Management and Budget (OMB).

B. Paperwork Reduction Act

The information collection requirements for this supplemental proposal have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and as ICR 2130.02. The information collection requirements are not enforceable until OMB approves them.

Transportation conformity determinations are required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant air quality standards. Transportation conformity applies under EPA's conformity regulations at 40 CFR parts 51.390 and 93 to areas that are designated nonattainment and those redesignated to attainment after 1990 (''maintenance areas'' with SIPs developed under Clean Air Act section 175A) for transportation-source criteria pollutants. The Clean Air Act gives EPA the statutory authority to establish the criteria and procedures for determining whether transportation activities conform to the SIP.

Amendments in today's supplemental proposal that are related to conformity requirements in existing PM_{10} nonattainment and maintenance areas do not impose any new information collection requirements from EPA that require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The information collection requirements of EPA's existing transportation conformity rule and any revisions in today's action for existing PM_{10} areas are covered under the DOT information collection request (ICR) entitled, ''Metropolitan and Statewide Transportation Planning,'' with the OMB control number of 2132–0529.

EPA provided two opportunities for public comment on the incremental burden estimates for transportation conformity determinations under the new 8-hour ozone and $PM_{2.5}$ standards. EPA received comments on both the initial burden estimates provided in the November 5, 2003 proposal (68 FR 62720) and on the revised estimates in the January 2004 ICR (69 FR 336). EPA responded to all of these comments, including accounting for some $PM_{2.5}$ hot-spot burden during the time period of the ICR in the final ICR that was submitted to OMB for approval for all aspects of the conformity rulemaking effort for the new air quality standards (ICR 2130.02). EPA estimated burden in this ICR based on implementing the most intensive options proposed.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When ICR 2130.02 is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the Agency to conduct a regulatory flexibility analysis of any significant impact a rule will have on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a

small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this supplemental proposal itself does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The primary purpose of this supplemental proposal is to determine requirements for hot-spot analyses in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. Clean Air Act section 176(c)(5) requires the applicability of conformity to such areas as a matter of law one year after nonattainment designations. Thus, although this rule explains how these analyses should be conducted, it merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. Thus, today's supplemental proposal is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this supplemental action merely proposes to establish and revise procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175: ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, as the Clean Air Act requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. This supplemental proposal would incorporate into the conformity rule provisions addressing newly designated $PM_{2.5}$ nonattainment and maintenance areas subject to conformity requirements under the Act that would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Accordingly, the requirements of Executive Order 13175 are not applicable to this supplemental proposal.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This supplemental proposal is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not involve the consideration of relative environmental health or safety risks on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This supplemental proposal is not subject to Executive Order 13211, ''Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this supplemental proposal is not likely to have any significant adverse effects on energy supply.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This supplemental proposal does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this supplemental proposal.

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: December 7, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is proposed to be amended as follows:

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 93.101 [Amended]

2. Section 93.101 is amended in the first sentence of the definition for ''Hot-spot analysis'' by removing ''CO and PM_{10}'' and adding in its place ''CO, PM_{10}, and/or $PM_{2.5}$''.

3. Section 93.105(c)(1)(v) is revised to read as follows:

§ 93.105 Consultation.

* * * * *

(c) * * *

(1) * * *

(v) Identifying, as required by § 93.123(b), projects located at sites in PM_{10} and $PM_{2.5}$ nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} and/or $PM_{2.5}$ hot-spot analysis;

* * * * *

4. Section 93.109 is amended as follows:

a. In Table 1 of paragraph (b), revising both entries for ''§ 93.116'';

b. By redesignating paragraphs (i)(1) and (2) as paragraphs (i)(2) and (3) and adding new paragraph (i)(1);

c. In paragraph (k) by removing ''CO and PM_{10}'' and adding in its place ''CO, PM_{10}, and $PM_{2.5}$''; and

d. In paragraph (l)(1) by removing ''(''Localized CO and PM_{10} violations (hot spots)'')'' and adding in its place ''(''Localized CO, PM_{10}, and $PM_{2.5}$ violations (hot-spots)'')''.

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

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(b) * * *

TABLE 1.—CONFORMITY CRITERIA

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§ 93.116	CO, PM_{10}, and $PM_{2.5}$ hot spots
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§ 93.116	CO, PM_{10}, and $PM_{2.5}$ hot spots
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(i) * * *

(1) FHWA/FTA projects in $PM_{2.5}$ nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by § 93.116(a).

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5. In §93.116 the section heading and paragraph (a) are revised to read as follows:

§ 93.116 Criteria and procedures: Localized CO, PM_{10}, and $PM_{2.5}$ violations (hot-spots).

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO, PM_{10}, and/or $PM_{2.5}$ violations or increase the frequency or severity of any existing CO, PM_{10}, and/or $PM_{2.5}$ violations in CO, PM_{10}, and $PM_{2.5}$ nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

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6. Section 93.123 is amended as follows:

a. Revising the section heading;

b. Revising the first sentence of paragraph (a)(1) introductory text;

c. Amending paragraph (b) by either:

Under Option A

i. Revising paragraph (b)(1)(iii);

ii. Adding new paragraph (b)(1)(iv); and

iii. Revising paragraph (b)(3); or

Under Option B

i. Revising paragraph (b)(1) and (2); and

ii. Removing paragraph (b)(3) and redesignating paragraph (b)(4) as (b)(3);

d. Amending paragraph (c)(4) by removing ''PM_{10} or CO'' in the first sentence and adding in its place ''CO, PM_{10}, or $PM_{2.5}$''; and e. Amending paragraph (c)(5) by removing ''CO and PM_{10}'' in the first sentence and adding in its place ''CO, PM_{10}, and $PM_{2.5}$''.

§ 93.123 Procedures for determining localized CO, PM_{10}, and $PM_{2.5}$ concentrations (hot-spot analysis).

(a) *CO hot-spot analysis.* (1) The demonstrations required by § 93.116 (''Localized CO, PM_{10}, and $PM_{2.5}$ violations'') must be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified

in 40 CFR part 51, Appendix W (Guideline on Air Quality Models).* * *

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Option A for paragraph (b):

(b) PM_{10} and $PM_{2.5}$ hot-spot analyses.

(1) * * *

(iii) New or expanded bus and rail terminals and transfer points which significantly increase the number of diesel vehicles congregating at a single location;

(iv) Projects in or affecting locations, areas, or categories of sites which are identified in the PM_{10} or $PM_{2.5}$ applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

* * * * *

(3) The identification of the sites described in paragraphs (b)(1)(i), (ii), (iii), and (iv) of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in § 93.105. DOT, in consultation with EPA, may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. DOT, in consultation with EPA, may also choose to make a categorical conformity determination on roadways and intersection based on appropriate modeling of various configurations and activity levels.

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Option B for paragraph (b):

(b) PM_{10} and $PM_{2.5}$ hot-spot analyses.

(1) The hot-spot demonstration required by § 93.116 must be based on quantitative analysis methods for projects in or affecting locations, areas, or categories of sites which are identified in the PM_{10} or $PM_{2.5}$ applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

(2) The identification of the sites described in paragraph (b)(1) of this section shall be determined through the interagency consultation process required in § 93.105. DOT, in consultation with EPA, may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. DOT, in consultation with EPA, may also choose to make a categorical conformity determination on roadways and intersection based on appropriate modeling of various configurations and activity levels.

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§ 93.125 [Amended]

7. Section 93.125(a) is amended by removing ''PM_{10} or CO'' in the first sentence and adding in its place ''CO, PM_{10}, or $PM_{2.5}$''.

§ 93.126 [Amended]

8. Section 93.126 is amended in footnote 1 by removing ''PM_{10}'' and adding in its place ''PM_{10} and $PM_{2.5}$''.

§ 93.127 [Amended]

9. Section 93.127 is amended by removing ''CO or PM_{10}'' and adding in its place ''CO, PM_{10}, or $PM_{2.5}$''.

[FR Doc. 04–27171 Filed 12–10–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7665]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.