

should remain obligated to submit a 1-hour ozone attainment demonstration.

2. *Areas designated attainment under the 8-hour standard.* Since attainment areas are subject to PSD, not nonattainment NSR, we propose that these areas would not remain subject to the nonattainment NSR offset and major source thresholds that might otherwise apply due to their classification for the 1-hour standard. However, we are proposing that control obligations that applied based on an area's 1-hour classification would remain. We are proposing that these areas are obligated to submit a maintenance plan under section 110(a)(1). Consistent with EPA's "Clean Data Policy," we are proposing that these areas not be required to meet outstanding attainment demonstration and rate-of-progress (ROP) requirements, so long as they remain in attainment. However, if the area violates the 8-hour standard and does not have an approved maintenance plan for the 8-hour standard under section 110(a)(1), those obligations will once again apply. We are proposing that these areas would need contingency measures in their section 110(a)(1) maintenance plans. However, unlike contingency measures under section 175A, these contingency measures need not include an obligation to implement all control obligations in the previously approved SIP. For all areas designated attainment for the 8-hour ozone NAAQS the requirement to demonstrate conformity to the 1-hour standard would no longer apply once the 1-hour standard is revoked or determined not to apply for that purpose.

3. *Concerning the NO<sub>x</sub> SIP Call.* We are proposing that States must continue to adhere to the emission budgets established by the NO<sub>x</sub> SIP Call after the 1-hour standard is revoked in whole or in part. Similarly, we are not proposing to revoke or modify the section 126 regulation.

4. *Obligations under part D of title I of the CAA that would not continue to apply.* We are proposing that areas would not be obligated to continue to demonstrate conformity for the 1-hour standard once the 1-year grace period for application of conformity for the 8-hour standard has elapsed. We are also proposing that we would no longer make findings of failure to attain the 1-hour standard and, therefore, also would not reclassify areas to a higher classification for the 1-hour standard based on a failure to meet the 1-hour standard.

5. *How long would the obligations discussed under the 1-hour standard last?* We are proposing that these measures would not expire. However,

we are proposing two options for when the State may relegate these measures to contingency measures: *Option 1.* When the area achieves the level of the 1-hour ozone standard (even if the area has not yet attained the 8-hour standard).

*Option 2.* When the area attains the 8-hour standard and is designated attainment (regardless of when, if ever, the area attains the 1-hour standard).

6. *Mechanism to effect the transition from the 1-hour to the 8-hour standard.* We are proposing 2 mechanisms. For both of these mechanisms, we are proposing that the revocation of the 1-hour standard would occur 1 year following designations for the 8-hour NAAQS. *Option 1:* Complete revocation of the 1-hour standard. *Option 2:* Partial revocation of 1-hour standard.

#### D. Mandatory Measures

We believe that the CAA is clear that once an area is classified under subpart 1 or subpart 2, the area's State implementation plan must contain the measures enumerated in the CAA for its classification. However, today's proposal contains several features intended to provide States with flexibility on the measures included in SIPs for 8-hour areas. In addition, we are proposing to consider case-by-case waivers if the applicant can show, consistent with case law on this issue, that implementing a requirement in a particular area would cause "absurd results."

#### E. Consequences of Failure To Attain

The consequences of failure to attain the standard on time are specified by the CAA. If an area classified under subpart 2 fails to meet the standard by its deadline, the CAA requires that the area be bumped up to a higher classification and adopt a revised plan containing the additional measures specified by the CAA for that classification. If an area classified under subpart 1 fails to meet the standard by its deadline, the area would be required to adopt a new plan demonstrating attainment, including any requirement mandated by the Administrator.

#### F. Interstate Transport

EPA recognizes that ozone and ozone precursors are often transported across State boundaries, and that interstate transport can make it difficult—or impossible—for some States to meet their attainment deadlines solely by regulating sources within their own boundaries. To address this concern, the Agency recently adopted two rules (the NO<sub>x</sub> SIP Call and the Section 126 Rule) to reduce interstate ozone transport in the eastern U.S. These rules were

developed based on the level of reductions needed to address transport for both the 1-hour and 8-hour standards. For both rules, the compliance date for achieving the required emissions reductions is May 31, 2004. Thus, unlike in the past, States affected by transport can develop their local ozone implementation plans with the knowledge that the issue of interstate transport has already been addressed "up front."

The President recently proposed legislation known as the Clear Skies Act that, among other things, would further reduce interstate transport of ozone and NO<sub>x</sub> (an ozone precursor) from the power sector through a cap-and-trade program similar to the acid rain program. These reductions are beyond the levels required under the NO<sub>x</sub> SIP Call and the Section 126 Rule. The Clear Skies reductions would enable several additional areas to meet the 8-hour standard without imposing any additional local controls. A number of other areas would find it easier to meet the 8-hour standard because of the additional reductions in power plant emissions that would be required under Clear Skies. However, the Agency has not made a determination that such reductions are warranted under the transport provisions of the CAA. In order to evaluate this issue, the Agency intends to investigate the extent, severity and sources of interstate ozone transport that will exist after the existing transport rules are implemented in 2004.

#### G. Modeling and Attainment Demonstration

An attainment demonstration SIP includes technical analyses to locate and regulate sources of emissions that are contributing to violations within nonattainment areas. Section 182(a) does not require marginal areas, which have an attainment date only 3 years following designation to perform any photochemical grid modeling. We are proposing to allow areas with attainment dates within 3 years after designation—regardless of whether they are covered under subpart 1 or 2—to rely on existing modeling. Areas with later attainment dates (more than 3 years after designation) would be required to do an attainment demonstration SIP. Modeling developed to support Federal or local controls may be used if the application of that modeling is consistent with our modeling guidance.

#### H. Reasonable Further Progress (RFP)

There are several issues related to the Act's RFP requirements.