

already projected to meet the standard in the near term.

The other 49 gap areas could be regulated either under subpart 1 (under option 2) or as marginal areas if classified by 8-hour design value under subpart 2 (under option 1). These areas already are meeting the 1-hour standard and are close to meeting the 8-hour standard. Because control requirements for marginal areas are similar to those for subpart 1 areas, and because most of these areas are projected to attain within 3 years, the difference in regulatory category may make no practical difference for many of these areas. A potential rationale for placing these areas under subpart 1 is to provide States and EPA with greater discretion to handle implementation difficulties that might arise in some of these areas. For example, a gap area might fail to attain within the maximum attainment date for marginal areas (3 years after designation) because of pollution transport from an upwind nonattainment area with a later attainment deadline. In that event, subpart 2 calls for the area to be reclassified as moderate and for the area to implement additional local controls specified for moderate areas. For areas under subpart 1, however, we could provide additional time for the area to attain while the upwind sources implemented required controls if this were determined to be a more effective or more appropriate solution. Although regional modeling projections indicate that the NO<sub>x</sub> SIP Call will bring most gap areas into attainment by 2007, some States have voiced concern to us that interstate or intrastate pollution transport may affect future 8-hour areas with near-term attainment deadlines. Subpart 1 would provide States and EPA with more flexibility on the remedy in any such cases.

Although we believe that there are reasons to place gap areas in subpart 1, and have the legal authority to do so, we are not suggesting that subpart 2 is unreasonable for any area that would be subject to subpart 2 under either classification option. Also, our analysis here should not be taken as inconsistent with its proposal under classification option 1, whereby all 8-hour ozone nonattainment areas would be subject to the subpart 2 planning obligations. That simpler option, in conjunction with the incentive feature for classifications (if ultimately adopted), described below in this section on classification, could provide similar flexibility on control measures for most (though not quite all) areas. In addition, we are proposing ways in which to build some flexibility into some of the mandated VOC control

obligations in subpart 2, in areas where it would make sense to provide such flexibility. A final observation is that Congress did recognize some benefit in prescribing measures for areas because of past failure to attain under less prescriptive provisions of the CAA.

Placing all gap areas in subpart 1 would result in over half of the hypothetical nonattainment areas being covered by subpart 1. To be fair, this option might appear to result in some areas being placed in subpart 1 even though they have 8-hour ozone design values as high or higher than some areas that fall under Table 1 in section 181 and thus are covered under subpart 2. As explained above, we believe the most effective way to deal with that issue is not to exercise our discretion and make those areas subject to subpart 2. Rather, we can use our discretion under subpart 1 to determine how to define the controls required under subpart 1 for such areas in order to assure the most equitable, yet effective, means for these areas to attain the 8-hour ozone NAAQS. For example, in the section of this proposed rulemaking addressing RFP under subpart 1, we explore an option of defining RFP in the same manner as it is defined under subpart 2. EPA is open to suggestions as to how to make the subpart 1 planning process that would apply to these areas effective and also equitable in light of the subpart 2 planning obligations to which areas with a similar 8-hour ozone problem may be subject.

#### 6. Proposed Incentive Feature

In addition to the two basic classification options being proposed above, we are also proposing an early attainment incentive feature that could be applicable to either of the options proposed above. Under this feature, for areas classified under subpart 2, we would classify an area at a lower classification than it would receive based on its design value, if a modeled demonstration indicates the area will attain by an attainment date that is consistent with the lower classification. For instance, if a subpart 2 area has an 8-hour ozone design value of 0.094 ppm, it would ordinarily be classified as moderate, with an attainment date 6 years after the area's designation as nonattainment for the 8-hour standard. If modeling acceptable to EPA demonstrates that this area will attain within 3 years after designation, the area would be eligible for classification as a marginal area, since marginal areas would have a maximum attainment date of 3 years after their nonattainment designation date. (See our proposal on

attainment dates elsewhere in this proposed rulemaking.)

The lower classification would provide additional flexibility to the area in that it would avoid the mandatory control requirements of the higher classification. Appendix A of this proposal provides a comparison of requirements under subparts 1 and 2.

In granting a lower classification to an 8-hour ozone nonattainment area based on this option, we propose to take into account the extent to which the area significantly contributes to downwind nonattainment or interferes with maintenance under section 110(a)(2)(D) of the CAA. We solicit comment on possible mechanisms for assessing this contribution for purposes of granting the lower classification, and possible tests for whether to grant or deny the lower classification.

In addition to soliciting comment on this proposed incentive feature itself, we are soliciting comment on whether such modeled demonstration would have to be made prior to the initial classification of areas, or whether it could be submitted after we have already classified the area initially at the higher classification, in which case we would have to revise the classification downward at a subsequent time.

We also solicit comment on whether EPA, prior to initial classifications, should use EPA regional-scale modeling (rather than urban-scale modeling) to make determinations of which areas would receive a lower classification. Under this suboption, an area would qualify for the lower classification if EPA's regional modeling indicated that, based on emissions reductions from existing national and regional programs, the area would attain the 8-hour standard by the attainment deadline for the next lower classification. In requesting comment on this suboption, EPA notes that regional-scale modeling alone is not considered sufficient for an approvable attainment demonstration. We request comment on whether regional-scale modeling would nonetheless be adequate for purposes of lowering an area's classification. (Under this approach, if regional modeling did not provide grounds for the lower classification, States would need to perform local attainment demonstrations to take advantage of the incentive feature.)

It should be noted that an option was presented and discussed at the public meetings similar to this incentive feature in conjunction with the option that would have classified all areas based on their 8-hour design values but also relied on modeled results to adjust the classification. The option received