

ppm or less. An area that has received the first of the 1-year extensions under the 8-hour standard would be eligible for the second extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

3. How Do Attainment Dates Apply to Indian Country?

As discussed elsewhere in this proposed rulemaking, the Tribal Authority Rule (TAR), 40 CFR 49.9 provides that Tribes should not be treated in a manner similar to States with regard to schedules, including the attainment dates. However, the TAR also requires EPA to develop Federal implementation plans (FIPs) where necessary and appropriate. (40 CFR 49.11). Because we believe that public health considerations are of primary concern, the attainment dates for primary NAAQS should be met. Therefore, EPA, in consultation with the Tribes, will work to ensure that the standards are addressed as soon as possible, considering the needs of the Tribes, and ensure that attainment in other jurisdictions is not adversely affected.

4. How Will EPA Establish Attainment Dates for Areas Classified as Marginal Under the "Incentive" Feature Proposed Under the Classification Section or Areas Covered Under Subpart 1 With a Requested Attainment Date of 3 Years or Less After the Designation Date?

EPA would ordinarily have established attainment dates for areas through a review of the SIP and whether attainment is as expeditious as practicable but no later than the date prescribed in the CAA. Elsewhere in this proposal, we are providing that marginal areas (under subpart 2) and areas under subpart 1 with an attainment date within 3 years after designation would not actually have to submit an attainment demonstration within 3 years after designation. Therefore, we must establish another procedure for establishing the attainment dates for these areas. We are proposing the following procedure.

a. *Areas that are classified marginal based solely on their 8-hour ozone design value.* For these areas, we are proposing that the CAA attainment date under Table 1 of section 181 would be the area's attainment date (namely, 3 years after designation).

b. *Areas that are classified marginal based on the proposed incentive feature proposed elsewhere and areas covered under subpart 1 with a requested attainment date of 3 years or less after*

the designation date. These are areas that are projected through modeling to attain within 3 years following designation. For these areas, we are proposing that these States must submit a SIP—within 1 year after designation—that provides documentation (viz., concerning the modeling and analyses that the area is relying on to support its claim) that the area will attain within 3 years following designation. Such a SIP submission must undergo the normal public hearing and comment procedures as for any SIP submission.

C. How Will EPA Implement the Transition From the 1-Hour to the 8-Hour Standard in a way To Ensure Continued Momentum in States' Efforts Toward Cleaner Air?

As areas are designated for the 8-hour ozone NAAQS, we must address how those areas will transition from current implementation of the 1-hour standard to implementation of the 8-hour standard. In addressing this issue, we considered a number of factors, including the existing "anti-backsliding" provisions of the CAA, Congress' intent, as evidenced in the statute, to ensure continued progress toward attainment of the ozone standard, and the Supreme Court's interpretation of the CAA and Congressional intent. In subsection 1 of this section, we provide background information on the transition process we set forth in 1997 (and subsequently amended through regulation) and we summarize the statutory anti-backsliding provisions and the Congressional intent in enacting these provisions and subpart 2 of the CAA. In subsection 2, we identify two proposed options to effect the transition from implementation of the 1-hour standard to the 8-hour standard that concern the revocation of the 1-hour standard in whole or revocation of the 1-hour standard in part. In subsection 3, we indicate—in light of the CAA provisions and Congressional intent—which requirements that applied for purposes of the 1-hour standard should continue to apply to areas after they are designated for the 8-hour standard. Next, in subsection 4, we consider whether there is a point at which the States should no longer be required to implement those obligations EPA determines continue to apply after areas are designated for the 8-hour standard. Finally, in subsection 5, we indicate how it will ensure through regulation that the public knows which "1-hour" obligations remain in place and for which areas.

1. Background

a. *Background on EPA's current regulation for governing the transition.* At the time we promulgated the 8-hour ozone NAAQS in July 1997, we issued a rule (40 CFR 50.9(b)) providing that the 1-hour standard would no longer apply to an area once we determined that the area had attained the 1-hour NAAQS. (62 FR 38856, July 18, 1997). This process became known as "revocation" of the 1-hour NAAQS. We interpreted that provision to mean that once the 1-hour standard was revoked, the area's 1-hour ozone designation no longer applied. Due to the ongoing litigation concerning the 8-hour ozone NAAQS and our implementation strategy for that standard, we subsequently modified 40 CFR 50.9(b) in part to provide that "after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once we determine that the area has air quality meeting the 1-hour standard." (65 FR 45181, July 20, 2000).²² Thus, currently, three criteria would need to be met before we could revoke the 1-hour standard for an area: (1) The 8-hour standard would need to be fully enforceable, (2) all legal challenges to the 8-hour ozone NAAQS would need to be resolved; and (3) we would need to determine that an area had attained the 1-hour standard.

In this section, we are proposing to revise 40 CFR 50.9(b) to reflect more appropriately the implementation strategy that we develop pursuant to this proposal. At the time that we initially promulgated 40 CFR 50.9(b), we contemplated that areas would not be subject to the planning obligations of subpart 2 for purposes of implementing the revised 8-hour ozone NAAQS. Furthermore, we stated that "as a matter of law," areas should continue to be subject to the planning obligations of subpart 2 for purposes of implementing the 1-hour standard until such time as they attained the 1-hour ozone NAAQS. Thus, we contemplated that the 1-hour NAAQS—and the associated designation and classification under subpart 2 for an area, including any mandated control obligations—would continue to apply until the area attained that standard. At that time, the area would be subject only to the planning obligations of subpart 1. In light of the

²² On December 27, 2002 (67 FR 79460), EPA proposed to stay the applicability of its authority to revoke the 1-hour standard pending rulemaking to consider whether to modify the approach for transitioning to the 8-hour standard.