

Supreme Court's ruling that we cannot ignore subpart 2 for purposes of implementing a revised ozone NAAQS, we believe it is appropriate to reconsider how to transition from the 1-hour NAAQS to the 8-hour NAAQS in light of the statutory structure of the CAA, as amended in 1990.

Our principal objectives for the mechanism that would ensure a smooth transition to implementation of the 8-hour standard are to ensure (1) that there will be no degradation of air quality, (2) that areas continue to make progress toward ozone attainment, and (3) consistency with the intent of Congress when it originally established the implementation structure for ozone in subpart 2 of the CAA.

We believe the several alternative approaches proposed below are more consistent with the implementation path we are proposing in light of the Supreme Court's remand. These alternatives would more effectively continue the momentum towards cleaner air than would have been accomplished under the current 40 CFR 50.9(b) structure while allowing 8-hour ozone nonattainment areas to more readily focus on their 8-hour ozone standard SIP obligations.

b. *Background on the CAA's anti-backsliding provisions.* The CAA contains a number of provisions that indicate that Congress did not intend to allow States to alter or remove provisions from implementation plans if the plan revision would jeopardize the air quality protection provided in the approved plan. Section 110(l) provides that EPA may not approve a SIP revision if it interferes with any applicable requirement concerning attainment and ROP or any other applicable requirement of the CAA. Congress created a tougher test for areas that might want to relax control requirements that were in SIPs prior to the CAA Amendments of 1990. Section 193 of the CAA prohibits modification of a control requirement in effect or required to be adopted as of November 15, 1990 (*i.e.*, enactment of the 1990 CAA Amendments), unless such a modification would ensure equivalent or greater emissions reductions.

We also believe that Congress set an additional statutory bar for 1-hour ozone areas that were designated nonattainment and classified at the time of the 1990 CAA Amendments. For these areas, Congress classified the areas "as a matter of law" and provided that even upon redesignation to attainment, such areas could not remove from the SIP control measures specified in subpart 2 ("applicable requirements"), but could shift them to contingency

measures that would be implemented to "promptly correct any violation of the standard."

For these reasons, we believe that although Congress gave EPA the power to revise the existing ozone standard, Congress did not open the door for States to remove SIP-approved measures or to avoid control obligations with which they have not yet complied.

One other provision, though not directly applicable, sheds light on Congress' intent. In 1990, Congress enacted section 172(e), which applies when EPA revises a NAAQS and makes it less stringent. This provision specifies that in those circumstances, States cannot relax control obligations that apply in nonattainment area SIPs or avoid adopting those that they have not yet adopted.²³ Because Congress specifically mandated that such control measures need to be adopted or retained even when EPA relaxes a standard, we believe that Congress did not intend to permit States to remove control measures when EPA revises a standard to make it more stringent, as in the case of the 8-hour standard.

We also note that in finding EPA's subpart 1-only implementation approach unlawful, the Supreme Court voiced concern that EPA not render subpart 2 "abruptly obsolete" because "Subpart 2 obviously was enacted to govern implementation for some time. * * * A plan reaching so far into the future was not enacted to be abandoned the next time EPA reviewed the ozone standard—which Congress knew could happen at any time, since technical staff papers already had been completed in 1989." In response to the decision, we are now proposing (as noted above in the discussion on classifications) to use subpart 2 in implementing the 8-hour standard. However, the classification systems we are proposing today would result in the majority of ozone nonattainment areas that are currently classified for the 1-hour standard being placed in a lower classification for the 8-hour standard. Our proposed anti-backsliding approaches, discussed below, would not render obsolete the congressionally-specified control measure requirements of subpart 2 for 1-hour ozone nonattainment areas at a time when those areas have not yet met either of the health-based ozone standards.

²³ Specifically, section 172(e) requires EPA to promulgate regulations providing for controls that "are not less stringent than the controls applicable to areas designated nonattainment" before relaxation of the standard.

2. When Will EPA Revoke the 1-Hour Standard?

We are proposing to revoke the 1-hour standard either in part or in whole 1 year following designations for the 8-hour NAAQS. As discussed below, we are proposing two different legal mechanisms for achieving the revocation. Under either approach, however, the same stipulations continue to apply to areas currently or formerly designated nonattainment for the 1-hour standard.

The deciding factor supporting the schedule for the revocation in our proposal is to ensure areas do not have to perform conformity analyses for both the 1-hour and 8-hour standards at the same time. As background, areas designated nonattainment for the first time for a new standard (*e.g.*, the 8-hour ozone standard) have a 1-year grace period before conformity applies for that standard (*i.e.*, a 1-year grace period before conformity applies for the 8-hour ozone standard). This 1-year grace period before conformity is required for the 8-hour standard applies to all areas designated nonattainment for the 8-hour standard, regardless of their 1-hour NAAQS designation status. Thus, under either of the mechanisms described below, we are proposing that conformity for the 1-hour standard no longer apply 1 year following the effective date of the 8-hour designation (*i.e.*, when the standard is revoked in whole or in part). However, conformity obligations for the 1-hour ozone standard would remain applicable during the grace period and would not be affected by the designation of areas for the 8-hour standard. Our intentions regarding conformity—as well as a more complete discussion of transportation conformity appear elsewhere in this proposal.

(i) *Option 1: Revocation in whole of the 1-hour standard.* Under this option, which is our preferred option, EPA would revoke the 1-hour standard and the associated designations and classifications 1 year following the effective date of the designations for the 8-hour NAAQS. The complete revocation of the 1-hour standard would occur in late spring of 2005 on the effective date of the 8-hour NAAQS designations, which will be issued by April 15, 2004. In order to address the anti-backsliding issues discussed in section 3, below, EPA would promulgate regulations specifying those requirements that would continue to apply after the revocation of the 1-hour standard. The regulations would also specify the geographic areas in which those obligations continue to apply, since areas designated nonattainment