

for the 8-hour standard may include counties that were not designated nonattainment for the 1-hour standard. The anti-backsliding regulations would apply only to the portion of the 8-hour nonattainment area that was designated nonattainment for the 1-hour standard.

(ii) *Option 2: Partial revocation of 1-hour standard.* Under this mechanism, EPA would retain the 1-hour standard and its associated designations and classifications for limited purposes (viz., those discussed and proposed below in section 3) until the area meets the 1-hour standard. For many areas, this is likely to extend well beyond May 2005, the date of likely revocation under option 1.²⁴ For all remaining purposes, EPA would revoke the 1-hour standard and the associated designations and classifications 1 year after the effective date of designations for the 8-hour standard. As noted above, we believe that Congress initially intended the State's obligations under subpart 2 to continue to apply "as a matter of law," and the 1-hour designations and classifications—established for the circumstances present when the requirements were enacted—are the mechanism Congress identified for triggering the applicability of these requirements. Under this theory, Congress would have intended the standard to remain in place for purposes of control measures and NSR requirements, as discussed above.

While the partial retention of the standard itself and the associated designations and classifications would be the mechanism used to retain the specified obligations, we would need to promulgate regulations similar to those described in option 1 to ensure that it is clear for which purposes the standard is being retained.

(iii) *Request for comment.* Both of these options would achieve the same result—ensuring the continued applicability of certain control requirements in subpart 2 and ensuring continued improvement in air quality, while shifting the focus from modeling and other planning requirements for the 1-hour standard to analyses for the 8-hour standard. We solicit comment on which mechanism is preferable for accomplishing the overriding objective of preventing backsliding from statutory and SIP requirements while achieving a smooth transition to implementation of

the new standard. In addition, EPA also solicits comment on whether to retain the limit in current 40 CFR 50.9(b) that the 1-hour standard will not be revoked for any area until the 8-hour standard is no longer subject to legal challenge.

(iv) *Other possible approaches for the transition from the 1-hour to the 8-hour standard.*

EPA considered other approaches for the timing of the revocation of the 1-hour ozone standard; these are discussed in a separate document available in the docket.²⁵

3. What Obligations Should Continue To Apply as an Area Begins To Implement the 8-Hour Ozone NAAQS and What Obligations Should No Longer Apply?

In this section, we consider what obligations from subpart 2 relative to the 1-hour ozone standard should continue to apply to areas after they have been designated for the 8-hour standard. We are proposing that the continuity of particular obligations should vary depending on the attainment status of an area for both the 1-hour and 8-hour standard. We first discuss those obligations that we propose should continue to apply to an area that is designated nonattainment for the 8-hour NAAQS, and that was designated nonattainment for the 1-hour ozone standard on or after November 15, 1990. Second, we discuss those obligations that should continue to apply to an area that is designated attainment for the 8-hour NAAQS, and that was designated nonattainment for the 1-hour standard on or after November 15, 1990. (This section addresses only the continued application of requirements that applied by virtue of an area having been designated nonattainment for the 1-hour standard at some point following enactment of the CAA Amendments of 1990. It does not address areas that have been designated attainment for the 1-hour standard at all times since November 15, 1990, because they would not have any continuing obligations under subpart 2 for purposes of the 1-hour standard.) Finally, we address States' continued obligations with respect to the NO_x SIP Call. We address this issue separately since this obligation applies statewide and without respect to the designation status of areas within the State.

In general, the types of obligations that apply to areas by virtue of their 1-

hour classification can be broken into three groups: control obligations; measures to address growth in new sources; and planning obligations. Control measures include specific emission reduction obligations such as NO_x RACT, I/M, and fuel programs, which are mandated in subpart 2. Measures to address growth are NSR (required under subpart 1 and subpart 2) and conformity (required by subpart 1). Planning obligations consist of attainment and maintenance demonstrations and RFP plans. For purposes of clarifying what we are proposing with respect to control measures, we also discuss in this section "discretionary" control measures that are not specified in subpart 2. Generally, these are control measures or other obligations the State selected and adopted into the SIP for purposes of attainment, ROP or any other goal to benefit air quality, but which are not specifically mandated by subpart 2.

a. *What obligations should continue to apply for an area that is designated nonattainment for the 8-hour NAAQS and that was designated nonattainment for the 1-hour ozone NAAQS on or after November 15, 1990?* We believe that Congress intended each area that was classified for the 1-hour ozone NAAQS under subpart 2 to adopt the specified control obligations in subpart 2 for the area's 1-hour classification. We interpret the mandated obligations in subpart 2 for purposes of an area's 1-hour ozone classification to remain applicable to such areas by virtue of the area's classification "as a matter of law" in 1990. (Appendix B of this proposed rulemaking contains a list of the subpart 2 requirements that remain applicable.) The three types of obligations described above (control obligations, measures to address growth in new sources, and planning obligations) are discussed separately below.

(i) *Control measures.* We are proposing that all areas designated nonattainment for the 8-hour ozone NAAQS remain subject to control measures that applied by virtue of the area's classification for the 1-hour standard. To the extent the area has met the obligation and the control measure is a part of the approved SIP, the State could not modify or remove that measure except to the extent that it could modify or remove that measure for purposes of the 1-hour standard and subject to a demonstration under section 110(l) that modification or removal would not interfere with attainment or maintenance of the 8-hour ozone

²⁴ A number of commenters in the pre-proposal phase recommended an approach premised on retention of the standard. See, e.g., Letter of December 5, 2002 from Michael P. Kenny, Executive Director, California Air Resources Board, to Jeffrey R. Holmstead, EPA Assistant Administrator for Air and Radiation. Available at: <http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/>.

²⁵ Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2003.