

NAAQS.<sup>26</sup> For control measures that the State has not yet adopted, the State remains obligated to adopt and submit such controls. And, once adopted into 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 NAAQS. This obligation would apply only to the part of the 8-hour ozone nonattainment area that was designated nonattainment for the 1-hour ozone NAAQS.

To illustrate what we are proposing, we provide the following example, which will also be used in the next section discussing discretionary control measures. Assume an area is classified as marginal for the 8-hour ozone NAAQS and was classified as serious for the 1-hour ozone NAAQS at the time of the 8-hour designations. Also assume RACT for a particular source category is considered an 80 percent reduction in uncontrolled emissions of VOCs at all major sources. In its 1-hour SIP, the State chose to require emissions reductions of 90 percent and the RACT requirement applied to all major stationary sources, which for a serious area includes all sources that emit greater than 50 tons/year VOCs. After designation for the 8-hour standard, the State wants to modify this RACT requirement to require only 80 percent reduction in emissions and to limit the requirement to sources that emit 100 tons/year of VOCs. Because the State could not have modified the RACT obligation to apply only to sources emitting 100 tons/year or more of VOCs for purposes of the 1-hour standard, the State could not change the source cut-off from 50 tons/year for purposes of the 8-hour standard. The 50 tons/year major source threshold would continue to be an "applicable requirement" for the part of the area that was designated nonattainment for the 1-hour NAAQS. The State, however, could apply RACT only to sources that emit 100 tons/year or more for any portion of the area that was not a part of the 1-hour serious nonattainment area. While the 80

percent control level would be considered mandatory, the 90 percent control level was not mandated by the CAA and thus is considered a "discretionary control measure." We address below how modification of a discretionary control measure would be treated under this proposal.

The same principle would hold true for control measures in a maintenance plan for an area that was designated nonattainment for the 1-hour standard at or after November 15, 1990 and that was subsequently redesignated to attainment under the 1-hour ozone standard.<sup>27</sup> Subpart 2 control measures (including those that had been shifted to contingency measures) could not be removed from the SIP and could be modified only to the extent that they could have been modified if the 1-hour standard remained in effect for the area. If the State had previously shifted a mandated subpart 2 control measure to its contingency plan, we would not require that the area begin to implement that measure as part of its 8-hour implementation plan, if the measure was not required under its classification under the 8-hour standard. However, the measure would need to remain as a contingency measure for the area and could not be removed from the SIP.

(ii) *Discretionary control measures.* Many approved SIPs contain control measures that are not specified under subpart 2 for the area, but that the State chose to adopt as part of the demonstration of attainment or part of the ROP requirement for the 1-hour NAAQS. For these kinds of measures, we are proposing that no additional burden be placed on the State. For purposes of the 1-hour standard, States may currently revise or remove those requirements so long as they make a demonstration consistent with section 110(l) that such removal or modification would not interfere with attainment of or progress toward the 1-hour ozone NAAQS (or any other applicable requirement of the CAA). Under the CAA, for purposes of the 8-hour standard, the same obligation would apply except the State would need to make the demonstration with respect to the 8-hour standard instead of the 1-hour standard.

In the example above, if a State wants to revise the control level for certain sources from 90 percent control to 80 percent control, the State may do so because subpart 2 mandated RACT in this example is an 80 percent level of control rather than a 90 percent control level. The 90 percent control level thus was "discretionary." We are proposing that no additional burden, beyond the statutory section 110(l) test, be placed on the State to alter this requirement. Thus, to revise the control level, the State would need to demonstrate, consistent with section 110(l), that the lower control level of 80 percent would not interfere with attainment of the 8-hour standard or RFP for the 8-hour standard (or any other applicable requirement of the CAA).

A number of SIPs contain enforceable commitments to adopt additional discretionary emission reduction control measures in the future. The State remains obligated to these commitments to the same extent as if they were adopted measures. The only way a State may modify or remove such a commitment is through a demonstration under section 110(l).

(iii) *Measures to address growth.* For 1-hour nonattainment NSR requirements in place at the time an area is designated nonattainment for the 8-hour standard, we are proposing that the major source applicability cut-offs and offset ratios continue to apply to the extent the area has a higher classification for the 1-hour standard than for the 8-hour standard. We see no rationale under the CAA—given the Congressional intent for areas "classified by operation of law"—why the existing NSR requirements should not remain "applicable requirements" for the portion of the 8-hour nonattainment area that was classified higher for the 1-hour standard. However, if an area has been redesignated to attainment for the 1-hour standard as of the date of designation for the 8-hour standard, and is thus no longer implementing the nonattainment NSR program for its previous 1-hour ozone classification, it would not need to revert back to the program it had for purposes of the 1-hour standard. For example, if an area is classified moderate under the 8-hour standard, but was classified severe under the 1-hour standard at the time of the 8-hour designations, the portion of the 8-hour nonattainment area that was classified severe for the 1-hour standard would remain subject to an offset ratio of 1.3:1 and a major source threshold of 25 tons/year. The remaining portions of the 8-hour area would be subject to the offset ratio for moderate areas (1.15:1)

<sup>26</sup> In addition, for a revision to an obligation that was in effect prior to November 15, 1990, section 193 prohibits a SIP revision without a showing that it would result in equivalent or greater emission reductions. For purposes of avoiding repetition, we do not mention section 193 in each of the examples discussed in this section. However, States remain obligated to make the section 193 demonstration for any revision to a requirement that applied prior to November 15, 1990.

<sup>27</sup> A maintenance plan, which is a SIP revision required under sections 107(d)(3)(E) and 175A as a prerequisite for redesignating a nonattainment area to attainment, must provide for maintenance of the NAAQS for 10 years after redesignation and must contain contingency measures to promptly correct any violation of the standard that occurs after redesignation. Contingency measures must provide for implementation of all measures that were contained in the SIP for the area before redesignation of the area as an attainment area.