

and the moderate area major source threshold (100 tons/year). If the severe 1-hour area had been redesignated to attainment prior to the time of the 8-hour designations and was subject to PSD rather than NSR, however, the entire designated area for the 8-hour standard would be subject to the offset ratio and major source threshold for a moderate area.

(iv) *Planning SIPs.* Most areas that are nonattainment under the 1-hour standard have already adopted attainment and ROP plans. However, there are a few areas that remain obligated to submit attainment or ROP SIPs. We have outlined our proposal for addressing ROP elsewhere in this proposed rulemaking and will not repeat those options in detail here. In general, however, we are proposing that States are still obligated to address separately ROP that does not overlap with ROP obligations for the 8-hour NAAQS. Where the ROP obligations overlap, the area need not separately address ROP for the 1-hour standard. For ROP already adopted into the SIP, we are proposing that the State may remove or revise control measures needed to meet the ROP milestone if such control measures were “discretionary,” as discussed above. But, a State could not revise or remove control measures if they would interfere with meeting the ROP goals. In other words, the CAA-mandated ROP emission reduction targets that applied for the 1-hour standard would still have to be met, but discretionary measures adopted to meet those targets could be modified, if the State makes the necessary showing under section 110(l).

With respect to attainment demonstrations, we are soliciting comment on the interpretation we should take for the two scenarios we believe exist. The first scenario would be a State that does not have a fully approved attainment demonstration under the 1-hour standard because it has failed to act in a timely manner. The second scenario is an area subject to an obligation to submit an attainment demonstration under the 1-hour standard in the future. In general, since attainment demonstrations are planning SIPs, and States must now be planning to attain the 8-hour NAAQS, one might argue that Congress could not have intended areas to continue to plan to meet a standard that EPA no longer considers to be adequately protective of public health. This is especially true when to do so would divert resources from planning to meet the 8-hour standard. In contrast, one could argue that allowing areas to bypass planning obligations under the 1-hour standard

will delay attainment of health protection since States have more time to submit attainment plans under the 8-hour standard than under the 1-hour standard.²⁸

There are some cases where a State does not have a fully-approved attainment demonstration because it has failed to act in a timely manner. To lift that obligation from those areas simply because EPA had adopted a more stringent NAAQS could result in a more preferential treatment of those areas over areas that did adopt fully-approved attainment demonstrations with the requisite controls. For example, if an area has adopted controls to demonstrate attainment of the 1-hour standard, it may not remove those controls from its SIP without a demonstration that those controls would not interfere with attainment or progress toward the 8-hour standard (or any other applicable requirement of the CAA). Such an area likely would have more stringent control obligations in place than the area without a fully-approved attainment SIP and would have a high hurdle to removing or altering those controls. In contrast, the area without a fully-approved attainment demonstration would likely make slower progress toward attaining the 8-hour NAAQS (at least in the short-term) because it does not have all necessary measures in its approved SIP and—without a clear requirement to the contrary—would be under no pressure to have those measures in its SIP until its attainment demonstration for the 8-hour NAAQS is due.

For the following examples of actual situations, we are soliciting comment on whether to retain the obligation to develop a 1-hour attainment demonstration or to determine that the requirement no longer applies. In addition, we are soliciting comment on two alternatives that might address some of the inequities, while not subjecting States to the more complicated planning associated with developing two separate attainment demonstrations (one under the 1-hour standard and another under the 8-hour standard). Under the first alternative

²⁸ For instance, an area with a past-due obligation to revise its SIP to develop a new attainment demonstration for the 1-hour standard could possibly submit such a revision within the next year or so (2004–2005), with emissions reductions beginning to occur likely within 1 or 2 years (by 2006–2007). If this area were now only required to address the 8-hour standard, it would not have to submit a new attainment demonstration until 2007, as proposed elsewhere in this proposed rule, with emissions reductions occurring from that demonstration likely a year or more after 2007, which is several years after the time period possible by fulfilling the existing obligation.

approach, areas that are subject to an obligation to submit a new or revised attainment demonstration would instead be required to submit a SIP revision that would obtain an advance increment of emissions reductions toward attainment of the 8-hour ozone standard within a specified, short-term timeframe. For example, we could require these areas to submit within 1 year of promulgation of the implementation rule a plan revision that requires a specific percentage of emissions reductions (e.g., 5 percent or 10 percent) from the baseline emissions for the 8-hour NAAQS. In addition, we could require that the measures be implemented in the near term, e.g., no more than 2 years after the required submission date. Under the second alternative, areas with an outstanding obligation to submit a 1-hour attainment demonstration would be required to submit their 8-hour ozone attainment demonstration early in lieu of being required to submit a 1-hour attainment demonstration. Submittal of an early 8-hour attainment demonstration would likely prevent the inequity of areas avoiding emissions reductions in the short term, as described in the preceding footnote.

- *Example 1:* An area has not met in part or in full a past-due obligation to submit a 1-hour attainment demonstration required because EPA reclassified the area to a higher classification after it failed to attain the 1-hour standard by its attainment date.

- *Example 2:* An area is subject to an obligation to submit an attainment demonstration in the future, as is the case where EPA applied its attainment date extension policy rather than reclassifying an area that failed to meet its attainment date and EPA has subsequently reclassified the area or soon will do so, because of the courts’ rejection of the extension policy.

(v) *Other obligations.* A number of areas have SIPs that contain commitments to review their progress toward attaining the 1-hour NAAQS (in some cases, these are called “mid-course reviews”). These SIP-approved commitments are enforceable, and EPA and the States can use these mid-course reviews to ensure that progress is being made consistent with the analysis in the area’s 1-hour attainment demonstration. The State remains obligated to honor these commitments.

b. *What obligations continue to apply for areas that are designated attainment under the 8-hour standard and that were designated nonattainment for the 1-hour standard on or after November 15, 1990?*