

(i) *Obligations related to NSR.* Areas that are in attainment for the 8-hour ozone NAAQS would not be subject to nonattainment NSR for the 8-hour standard. We believe it makes little sense to require nonattainment NSR to continue simply because these areas were previously designated nonattainment for the 1-hour standard. Thus, we propose that these areas would be subject to PSD and would not be subject to the nonattainment NSR offset and major source thresholds that applied under their classification for the 1-hour standard.

(ii) *Obligations related to planning obligations other than maintenance plans.* With respect to SIP planning obligations (ROP plans and attainment demonstrations), we are proposing that the SIP planning requirements that applied for purposes of the 1-hour standard would not continue to apply to these areas as long as they continue to maintain the 8-hour NAAQS. Thus, even if these areas have failed to meet ROP or attainment plan obligations for the 1-hour standard, they would not be required to meet them for so long as they remain in attainment with the 8-hour standard. (As discussed below, however, we are proposing that such areas develop a maintenance plan under section 110(a)(1).) This approach is consistent with EPA's "Clean Data Policy"<sup>29</sup> under the 1-hour standard, which provides for these planning obligations to be stayed once an area attains the standard, but only for so long as an area remains in attainment of the 1-hour standard. If such an area violates the 8-hour NAAQS prior to having an approved maintenance plan in effect (as proposed below to be required for these areas)—those obligations would once again apply in the same manner that they apply in areas designated nonattainment for the 8-hour ozone NAAQS.

(iii) *Obligations related to control measures and maintenance plans.* The issue of what obligation remains with respect to "non-discretionary" control measures approved into the SIP or required under the CAA is more difficult. Our approach for these is based on the CAA's requirements for maintenance plans. (Consistent with our proposal for discretionary control measures in areas designated nonattainment for the 8-hour NAAQS,

we would permit areas to modify discretionary measures for areas designated attainment for the 8-hour NAAQS so long as section 110(l) is met.)

If EPA determined that these areas<sup>30</sup> were required to develop maintenance plans pursuant to section 175A, then they would need to keep (or to adopt and then keep) those control measures in the SIP, though they could shift them to contingency measures. Some commenters urged us to require all areas previously designated nonattainment for the 1-hour NAAQS to retain (where the area had been redesignated to attainment) or develop (where the area was still designated nonattainment for the 1-hour NAAQS at the time of 8-hour designations) a section 175A maintenance plan. However, we do not believe that a section 175A maintenance plan is mandated or is necessary for areas initially designated attainment for the 8-hour NAAQS.

Section 175A maintenance plans are required for areas that were designated nonattainment for a NAAQS and then subsequently redesignated to attainment for that NAAQS. The areas addressed in this section have never been designated nonattainment for the 8-hour ozone NAAQS. Moreover, they have a maintenance obligation that already applies: Section 110(a)(1) requires areas to demonstrate how they will attain and maintain a new or revised NAAQS.<sup>31</sup> Therefore, we do not believe that Congress mandated that such areas be subject to the section 175A maintenance plan obligation for the 8-hour NAAQS, nor do we believe it is necessary to interpret that provision to apply.

For an area that was never redesignated to attainment for the 1-hour standard and never had a section 175A maintenance plan, we are proposing that if the area wants to revise any part of its current 1-hour SIP, the area must first adopt and submit a maintenance plan consistent with section 110(a)(1). Moreover, even if the State elects not to revise its existing SIP, we are proposing that the area submit a section 110(a)(1) maintenance plan within 3 years of designation as attainment for the 8-hour NAAQS. We believe that the maintenance plan should provide for continued maintenance of the 8-hour standard for

10 years following designation for the 8-hour NAAQS and should include contingency measures. Unlike section 175A, section 110(a)(1) does not address contingency measures and thus does not specify that mandated controls in the existing SIP must be shifted to contingency measures if modified or removed. We are proposing that if the State adopts sufficient contingency measures, and if it makes a demonstration consistent with section 110(1), it can modify or remove control measures in the approved SIP.

We are also proposing that areas with approved 1-hour section 175A maintenance plans will be able to modify those maintenance plans consistent with their obligation to have a maintenance plan for the 8-hour NAAQS under section 110(a)(1). For these areas, we are proposing that the following obligations could be removed from the SIP if the State demonstrates that the area will maintain the 8-hour standard consistent with section 110(a)(1) for a period of 10 years following designation for the 8-hour NAAQS:

- the obligation to submit a maintenance plan for the 1-hour standard 8 years after approval of their initial 1-hour maintenance plan;
- the requirement to implement contingency measures upon a violation of the 1-hour ozone standard; however, such areas would need contingency measures as part of a maintenance SIP for the 8-hour NAAQS and States could elect to modify the existing contingency measure trigger so that it is based on a violation or exceedance of the 8-hour standard.

(iv) *Obligations related to conformity.* For all areas designated attainment for the 8-hour ozone NAAQS, the requirement to demonstrate conformity to the 1-hour standard would no longer apply once the 1-hour standard is revoked in whole or determined not to apply for that purpose under a partial revocation of the 1-hour standard (as proposed below). Under section 176 of the CAA, conformity applies to areas designated nonattainment or subject to the requirement to develop a maintenance plan pursuant to section 175A. Areas designated attainment for the 8-hour standard would no longer be subject to the obligation to demonstrate conformity to the 1-hour emissions budgets in an approved attainment or ROP SIP or an approved section 175A maintenance plan for the 1-hour standard. The reason for this is that, under the options proposed below, they would either no longer be designated nonattainment for the 1-hour standard or the nonattainment designation would

<sup>29</sup> Memorandum of May 10, 1995, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," from John S. Seitz, Director, Office of Air Quality Planning and Standards. Available at: <http://www.epa.gov/ttn/oarpg/t1/memoranda/clean15.pdf>.

<sup>30</sup> 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.

<sup>31</sup> Based on ambient ozone data for the period 1998 to 2000 for the hypothetical nonattainment areas, we identified approximately 20 areas that are currently designated nonattainment under the 1-hour standard but that will likely be designated attainment under the 8-hour standard.