

no longer apply for purposes of conformity, and the area would no longer be required to develop a maintenance plan under section 175A for purposes of the 1-hour standard.

c. What happens with respect to the NO_x SIP Call?

Section 110(a)(2)(D) of the CAA establishes requirements for States to address the problem of transport. It requires a SIP to prohibit the State's sources from emitting air pollutants in amounts that will contribute significantly to nonattainment, or interfere with maintenance, in one or more downwind States. As noted above in section I of this proposal, in 1998, EPA called on 22 States and the District of Columbia ("States") to reduce emissions of NO_x consistent with budgets set for each State. (63 FR 57356, October 27, 1998). Furthermore, EPA granted petitions under section 126 and thus directly regulated certain sources of NO_x emissions in many of the States covered by the NO_x SIP Call. (65 FR 2674, January 18, 2000). Below, we refer to these collectively as the "NO_x transport rules."

The NO_x transport rules were designed to prevent upwind NO_x emissions from contributing to nonattainment in a downwind area for both the 1-hour and 8-hour ozone NAAQS. EPA, however, stayed the 8-hour basis for the NO_x transport rules in response to the extensive and extended litigation (described above) that occurred concerning the establishment of the 8-hour ozone standard. We intend to take rulemaking action to lift the stay of the 8-hour basis for these rules.

We believe it important to ensure that the transition to the 8-hour standard does not have the effect of jeopardizing the controls required to be in place under the NO_x transport rules. Regardless of whether EPA lifts the stay of the 8-hour basis for these rules, the controls required have substantial benefits for reductions of both 1-hour and 8-hour ozone levels. We believe that relaxing such controls would be contrary to the principles we identified above for an effective transition. Consequently, we are proposing that States must continue to adhere to the emission budgets established by the NO_x SIP Call after the 1-hour standard is revoked in whole or in part, as proposed below. Similarly, we are not proposing to revoke or modify its section 126 regulation.

However, States retain the authority to revise the control obligations they have established for specific sources or source categories, if they continue to meet their SIP Call budgets. In addition,

consistent with section 110(l), the States would need to demonstrate that the modification in control obligations would not interfere with attainment of or progress toward the 8-hour NAAQS or with any other applicable requirement of the CAA.

d. What additional obligations under part D of title I of the CAA would not continue to apply after the 1-hour standard is revoked in whole or in part?

As discussed elsewhere in this proposal, we are proposing that areas would not be obligated to continue to demonstrate conformity for the 1-hour standard once the 1-year grace period for application of conformity for the 8-hour standard has elapsed.

In addition, EPA would not take certain actions with respect to the 1-hour ozone NAAQS. First, we are proposing that we would no longer make findings of failure to attain the 1-hour standard and, therefore, would not reclassify areas to a higher classification for the 1-hour standard based on a failure to meet the 1-hour standard. We believe that areas should focus their resources on attainment of the 8-hour standard and that it would be counterproductive to establish new obligations for States with respect to the 1-hour standard after they have begun planning for the 8-hour standard. (Moreover, we note that the attainment dates for marginal, moderate and serious areas have passed and the CAA does not provide for reclassification of severe areas in the absence of a request by the State.) EPA must ensure that areas are continuing to make progress toward cleaner air. If EPA determines that a State is not adequately implementing an approved SIP and achieving air quality reductions in a timely manner, EPA may enter into an informal process to ensure the State takes any necessary action³² or, alternatively, may take more formal action such as making a finding of failure to implement the SIP or issuing a SIP Call to require action. As noted above, many areas have SIPs that contain commitments to review their progress toward attaining the 1-hour NAAQS ("mid-course review"). 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.

³² For instance, upon discussion between EPA and States, some States have in the past voluntarily agreed to revise their SIPs when it appears that the SIP is inadequate to attain or maintain the NAAQS.

4. Does the Requirement for Continued Implementation of the Obligations Addressed Above Expire at Some Point?

The SIP obligations under the 1-hour standard for an area's classification under the 1-hour standard would not expire after the 1-hour standard is revoked in whole or in part. However, for those mandatory requirements that continue to apply to an area due to the area's classification for the 1-hour NAAQS, we are proposing two options for when the State may move the mandatory measures to a maintenance plan in the SIP and treat them as contingency measures:

a. Option 1. When the area achieves the level of the 1-hour ozone standard (even if the area has not yet attained the 8-hour standard). The rationale for this option is that Congress intended an area to continue to implement these obligations until it attained the 1-hour standard, at which time the area would be able to discontinue implementation upon a showing of continued maintenance. However, in such a case, the area could not remove the measures from the SIP; rather, it could shift such measures to contingency measures.

b. Option 2. When the area attains the 8-hour standard and is designated attainment (regardless of when, if ever, the area attains the 1-hour standard). The rationale for this option is that the 8-hour standard is the standard that EPA has determined will protect public health and the environment. Once an area demonstrates it has met and can maintain the health protective standard, it would be appropriate to remove or modify those controls.

It should be noted that either of these two options could apply for either of the transition options, discussed in section 2, above.

It should also be noted that the SIP obligations would include not only requirements in the 1-hour nonattainment area but also for the SIP in general, including the SIP requirements to address the NO_x SIP Call. We are proposing under the anti-backsliding provision in section 110(l) to require that the SIP retain the NO_x SIP Call controls that have already been approved. In the absence of appropriate regional scale modeling that would demonstrate that changing a SIP Call control to a contingency measure would not interfere with attainment or maintenance in any other State, the State could not shift SIP Call control strategies to contingency measures. The State would, of course, also have to submit a demonstration that the SIP change would not interfere with attainment or reasonable further