

sensitive to VOC control. Because ozone formation is greatly affected by meteorological conditions and source/receptor orientation, ozone formation may be limited by either VOC or NO<sub>x</sub> concentrations at different times and locations within the same area.

In order to support the approach proposed below, we solicit relevant technical information on this issue from States and others.

## 2. Approach Being Proposed

In line with the legal interpretation above, we are proposing that subpart 2 requirements would apply to each area classified under subpart 2 consistent with the area's classification. However, today's proposal contains several features intended to provide States with flexibility on the measures required to be included in SIPs for 8-hour areas.

First, as explained in the section on classifications above, proposed classification option 2 would result in a number of areas being classified under subpart 1 rather than under subpart 2. Second, for both classification options, we are proposing an incentive feature that would allow areas to qualify for a lower classification with fewer mandatory requirements if the area could show it will meet the standard by the deadline for the lower classification. This would, for example, allow any area projected to attain by 2007 based on existing Federal measures and any State or local measures approved into the SIP to be classified as marginal and to avoid subpart 2 mandatory measures—some of which may be significant—that apply to higher classifications.

Under either of our proposed classification frameworks, a majority of potential 8-hour areas would *not* be subject to significant subpart 2 mandatory measures because they would be classified marginal or lower. Based on our analysis of hypothetical nonattainment areas, there would be fewer than 10 potential 8-hour nonattainment areas classified “serious” or above, and these areas already are implementing requirements applicable to serious or above areas for the 1-hour standard. Therefore, the main impact of subpart 2 mandatory measures in 8-hour implementation would be on (1) areas that are classified as moderate, and did not have to meet moderate or above requirements for the 1-hour standard, (2) areas classified as moderate or above that would be subject to ROP requirements for the 8-hour NAAQS, and (3) new counties or areas included as part of a serious or higher classified nonattainment area.

As a third flexibility mechanism, we are proposing to consider allowing case-

by-case waivers when sufficient evidence is presented that application of a specific requirement in a particular area would cause absurd results. Evidence of an absurd result might, for example, include a modeled demonstration that future VOC reductions required under subpart 2 for a particular area would actually cause ozone to increase more than a *de minimis* amount and therefore increase the amount of NO<sub>x</sub> emissions reductions needed for the attainment demonstration. Such a showing would also have to account for the potential benefits of the mandated controls in downwind areas in determining whether on the whole the application of the subpart 2 measure would produce an absurd result.

We believe that absurd results will happen only rarely in those cases where application of the requirement in that area would thwart the intent of Congress in enacting the relevant provisions of the CAA. In such cases, EPA may be able to provide limited relief to the area, but only to the degree needed to protect Congressional intent. For example, we believe that the purpose of the 15 percent VOC ROP requirement is to ensure that areas make progress cleaning up their air and moving toward their goal of attainment in the first 6 years following the emissions baseline year. If an area could demonstrate that reductions in VOC would provide no progress toward attaining the standard, EPA may be allowed to interpret the statute to allow for reduction in NO<sub>x</sub> emissions instead. EPA could not, however, simply waive the requirement for the area to meet the ROP goals of the CAA. Moreover, it would not be sufficient for the area to show that VOC reductions would be less beneficial than NO<sub>x</sub> reductions. While one might contend that such a result is not the most logical result, it is not absurd. The above example is a simplistic example—application of the absurd results test in any specific situation would likely be more complex. In any specific situation, we would need to consider all of the facts in light of various statutory provisions. For example, we would need to consider that another goal of the SIP provisions in the CAA is to mitigate transport of ozone (and ozone precursors). Therefore, in determining whether there is an “absurd result,” we would not only need to consider the implications for the specific area asserting an absurd result, but also the effects on downwind areas.

A State attempting an absurd results demonstration would have to work very closely with EPA to ensure that the demonstration passes the highest

standards of technical credibility. If we had information that the agency believes supports an absurd results showing, we would make that information available to the State. The State would, of course, have to subject this demonstration to the same public process carried out for the SIP submission itself prior to submission to EPA of the SIP containing the demonstration. In no way would this waiver exempt an area from the requirement to demonstrate attainment by the attainment date or to demonstrate RFP toward attainment consistent with the area's classification. We would have to review the State's demonstration as to whether the result is “absurd” in light of the particular statutory requirement at issue and within the context of the statute as a whole. Simply because a State may demonstrate an absurd result for purposes of meeting one statutory provision, such as the requirement for a 15 percent VOC reduction within 6 years after a base year, this does not imply that some other provision of the CAA that requires VOC reductions is automatically considered “absurd.”

## 3. Other Approaches Considered

We considered a number of other options for allowing additional flexibility for subpart 2 requirements. These other options that were considered but are not being proposed are described in a separate document available in the docket.<sup>33</sup>

### *E. What Is the Required Timeframe for Obtaining Emissions Reductions To Ensure Attainment by the Attainment Date?*

Section 172(c)(2) of the CAA requires that emissions reductions needed for attainment be phased in such that RFP toward attainment is achieved. For areas classified as moderate under subpart 2, their attainment date would be as expeditiously as practicable but no later than 6 years after the date of classification. Their ROP requirement would be at least a 15 percent VOC emissions reduction from the base year to be achieved no later than 6 years after the base year. However, if the area needed more than 15 percent VOC reductions in order to demonstrate attainment, then any additional reductions would also have to be achieved by the beginning of the ozone season prior to the area's attainment date.

<sup>33</sup> 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.