

States should be aware of the consequences of failing to implement the control measures necessary for attainment sufficiently far in advance of the attainment date. For areas covered under subpart 2, section 181(a)(5) of the CAA does allow for up to two 1-year attainment date extensions in certain circumstances. We are proposing how those extension provisions would be implemented elsewhere in this proposal under the discussion of attainment dates. To obtain the first of the 1-year extensions, the CAA basically requires that the area be meeting the level of the standard in the attainment year itself, even if the area has not actually attained considering the most recent 3 years of data. Thus, the States should ensure that the emissions reductions be implemented to ensure that ozone levels for the ozone season preceding the attainment date are below the level of the standard. If an area does not meet the eligibility requirements for a 1-year extension (as proposed elsewhere in this rulemaking) in the attainment year, then the area would not be eligible for an attainment date extension, and EPA would have an obligation to reclassify the area to a higher classification ("bump-up"). A marginal area with an attainment date 3 years after its nonattainment designation that fails to attain would be subject to bump-up to at least moderate, and would then have to prepare a plan to attain within 3 years afterward (6 years after their nonattainment designation).

There is further discussion of this situation as it relates to the 1-hour ozone standard in the General Preamble of April 16, 1992 (57 FR 13498, 13506); this discussion may have some applicability to the 8-hour standard.

Areas covered under subpart 1 are also able to obtain up to two 1-year extensions of the attainment date (see section 172(a)(2)(C)). There is no provision for bump-up in classification similar to that under subpart 2. However, if an area fails to attain, section 179 of the CAA provides that EPA publish a finding that the area failed to attain. The State then must submit within 1 year after that publication a revision to the SIP that provides for attainment within the time provided under section 179. Section 179 also provides that the SIP revision must also include any additional measures that EPA may prescribe.

Elsewhere in this notice of proposed rulemaking, we also refer to requiring that emission reductions needed for attainment need to be implemented by the attainment date. By this, we mean that they must be implemented by the beginning of the ozone season prior to

the attainment date. In other words, if the attainment date is April 15, 2010, the reductions would need to be implemented by the beginning of the ozone season in the previous year (2009). Ozone seasons are defined in 40 CFR Part 58, Appendix D; for many States, the ozone season starts March 1 or April 1.

F. How Will EPA Address Long-Range Transport of Ground-Level Ozone and Its Precursors When Implementing the 8-Hour Ozone Standard?

1. Background

Although much progress has been made over the last decade to improve air quality, many States contain areas that have not yet attained the 1-hour ozone standard and/or that are violating the 8-hour ozone standard. Some of these areas are significantly affected by interstate ozone transport from upwind areas. Wind currents can transport ozone and NO_x, a primary precursor to ozone, long distances, affecting multiple States downwind of a source area. EPA recognizes that this type of interstate transport can make it difficult—or impossible—for some States to meet their attainment deadlines solely by regulating sources within their own boundaries. The 1990 Amendments to the CAA reflect Congress' awareness that ozone is a regional, and not solely a local problem. Section 110(a)(2)(D) provides an important tool for addressing the problem of transport. It provides that a SIP must contain adequate provisions to prohibit sources in a State from emitting air pollutants in amounts that contribute significantly to nonattainment, or interfere with maintenance, in one or more downwind States. Section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet any CAA requirement, including the requirements of section 110(a)(2)(d). If EPA makes such a finding, it must require the State to submit, within a specified period, a SIP revision to correct the inadequacy. The CAA further addresses interstate transport of pollution in section 126, which authorizes any State to petition EPA for a finding designed to protect the State from significant upwind sources of air pollutants from other States.

In the past several years, EPA has conducted two rulemakings to control interstate ozone transport in the eastern U.S. In 1998, EPA issued the NO_x SIP Call, which requires certain States in the eastern U.S. to meet statewide NO_x emissions budgets (63 FR 57356, October 27, 1998.) State programs to implement the rule have focused on

reducing emissions from electric power generators and large industrial emitters. In addition, in response to petitions submitted by several northeastern States under section 126, EPA issued a separate rule (usually known as the Section 126 Rule) to establish Federal control requirements for certain electric power generators and industrial boilers and turbines in upwind States (64 FR 28250, May 25, 1999 and 65 FR 2674, January 18, 2000). For both rules, the compliance date for achieving the required NO_x reductions is May 31, 2004. These two transport rules overlap considerably, with the NO_x SIP Call being the broader action affecting more States. All the States affected by the Section 126 Rule are covered by the NO_x SIP Call. Therefore, EPA coordinated the two rulemakings and established a mechanism under which the Section 126 Rule would be withdrawn for sources in a State where EPA has approved a SIP meeting the NO_x SIP Call.³⁴

In both the NO_x SIP Call and the Section 126 Rule, EPA made determinations of whether upwind sources are significantly contributing to downwind nonattainment problems under both the 1-hour and 8-hour ozone standards. In the final SIP Call rule, EPA determined that the same level of reductions was needed to address transport for both the 1-hour and 8-hour standards.³⁵ Thus, unlike in the past, States affected by transport can develop their new ozone implementation plans with the knowledge that the issue of interstate transport has already been addressed up front. This approach will provide these States with certainty that they will benefit from substantial emissions reductions from upwind sources and give them significantly improved boundary conditions that they

³⁴ As a result of court actions, certain circumstances upon which the Section 126 Rule withdrawal provision was based have changed. The compliance dates for the Section 126 Rule and the NO_x SIP Call have been delayed and the NO_x SIP Call has been divided into two phases. The EPA recently issued a proposed rulemaking to update the withdrawal provision so that it will operate appropriately under these new circumstances (68 FR 16644, April 4, 2003).

³⁵ The Agency stayed the 8-hour basis for both rules in response to the extensive and extended litigation that occurred concerning the establishment of the 8-hour ozone standard. (65 FR 56245, September 18, 2000 and 65 FR 2674, January 18, 2000). Recently, however, the Administrator signed a final rule on the UV-B issue and reaffirmed the 8-hour ozone standard (68 FR 614, January 6, 2003), which was remanded to EPA in ATA I, 175 F.3d 1027. Having now reaffirmed the 8-hour standard, the Agency plans to take action in the near future to reinstate the 8-hour bases for both the NO_x SIP Call and the Section 126 Rule. Such action would provide the initial basis for dealing with ozone transport as part of the implementation of the 8-hour standard.