

applicable; and (4) have submitted an attainment plan containing any additional local control measures needed for attainment of the 8-hour standard. These plans must commit the State to implement, by December 31, 2004, all measures necessary to bring the nonattainment area into attainment by a 2007 attainment date.⁷¹ In addition, when a State submits its attainment plan, it should note that it intends to implement a program under appendix S, section VI that meets the requirements for transitional areas discussed below.

Note that, under this option, the attainment plan submission timing (*i.e.*, submission by the date of EPA designation of nonattainment areas) for transitional areas is about 3 years earlier than is otherwise required for areas not meeting the 8-hour standard. Note also that areas would be eligible for this transitional NSR provision even though we are not establishing a "transitional" nonattainment classification for areas covered under subpart 1. We request comment on these criteria.

Also, note that while relief from offsets is provided for the NSR transitional program (see discussion below), those States and Tribes subject instead to the main body of appendix S will still need to provide offset provisions.

b. *What would be the basic requirements of a transitional nonattainment NSR program under appendix S, section VI?*

i. *Major source applicability threshold.* Under the general part D NSR requirements, the applicability threshold for "major stationary source" is defined as 100 tons per year of a nonattainment pollutant; in some instances under subpart 2 the major source threshold can be as low as 10 tons per year. In contrast, the major source threshold under the PSD program is either 100 or 250 tons per year, depending upon the type of stationary source undergoing review. We propose that, consistent with the subpart 1 part D NSR requirements, an appendix S, subpart VI transitional nonattainment programs will use a major source threshold of 100 tons per year for each ozone precursor.

ii. *Emission Control.* Another key provision of the part D nonattainment NSR program is that, in order to be permitted, major new and modified sources must minimize their emission rate by applying control technology to achieve LAER, which is generally the

most stringent emission limit contained in a SIP or achieved in practice.

In contrast to LAER, which does not consider costs and other factors, a BACT analysis requires consideration of energy, environmental, and economic impacts in determining the maximum degree of reduction achievable for the proposed new source or modification. In a BACT analysis, as described in the New Source Review Workshop Manual,⁷² the most stringent emission limit, including the limit representing LAER and its associated control technology, must be considered. If the most stringent limit is rejected as BACT for a particular case, that decision must be supported by an analysis that shows that the most stringent limit should not be chosen in light of the costs or other relevant factors. For example, if the most effective control technology would impose unacceptably high costs because of site-specific factors, that technology could be rejected as BACT for the proposed source. In this way, BACT may be less stringent than LAER.

We request comment on whether a BACT requirement, consistent with the BACT approach described in the NSR workshop manual, may be required in transitional appendix S nonattainment NSR programs in lieu of requiring LAER. We believe granting this relief is appropriate, given the minimal difference we would expect between the emissions reductions achieved from BACT, rather than LAER, for the small number of sources that may trigger nonattainment NSR in transitional areas, for the few years the area is nonattainment.

iii. *Relief from source-specific offsets requirements.* We are proposing that major sources and major modifications would not be required to obtain case- and source-specific offsets under the transitional program. However, despite locating in a nonattainment area which qualifies for the NSR transitional program, a new major source may not cause or contribute to the existing violation in the nonattainment area. If the State determines that the source does not contribute to the existing violation, then mitigation would not be required.

There are several circumstances under which it is reasonable to assume that a new major source locating in a nonattainment area will not interfere with timely attainment of the standard. First, if the nonattainment area which

qualifies for the NSR transitional option is participating in the NO_x SIP Call (63 FR 57356; October 27, 1998), we expect that a source locating in the area will not cause or contribute to the existing violation, so long as the new emissions are consistent with growth projections. This is because it is assumed that where new emissions are consistent with growth projections, those new emissions will not interfere with timely attainment of the standard. Under the NO_x SIP Call, we modeled emissions for 2007. We included future growth projections for both VOC and NO_x emissions, and allocated each State a NO_x budget designed to control interstate NO_x transport. Because these budgets include an emission growth factor for VOC and NO_x, we believe that new major sources may locate in those nonattainment areas which qualify for the NSR transitional option without interfering with the area's ability to reach attainment, provided that any new emissions are within the projected emissions growth factor. We expect States to develop appropriate emission inventory procedures to assure that any new emissions are consistent with projected growth in emissions.

Those nonattainment areas which qualify for the NSR transitional program that are not projected to attain under the NO_x SIP Call or are not covered by the NO_x SIP Call may also allow for an increase in new major source emissions if their attainment demonstration includes an emissions growth factor for major new and modified sources and demonstrates that, provided emission increases from new major sources remain below this level, the area will reach attainment. Again, we expect States to develop appropriate emission inventory procedures to demonstrate that the new emissions are consistent with projected growth in emissions.

iv. *Other requirements.* In addition to the control technology requirements discussed above, and consistent with current NSR requirements under appendix S, section IV, condition 2, sources locating in transitional areas will be required to certify statewide compliance of all existing major sources under the same ownership or control. We believe this requirement will not impose a substantial burden on permit applicants or permitting authorities.

v. *Backstop Provisions.* Should a nonattainment area under the appendix S, section VI transitional program fail to meet its SIP obligations to attain the NAAQS before the end of the interim period, then it will no longer be eligible for the transitional program. We request comment on the need for a backstop provision that requires a State to notify

⁷¹ The actual attainment date—as proposed elsewhere in this proposal—would be 3 years after the nonattainment designation.

⁷² U.S. EPA Office of Air Quality Planning and Standards, New Source Review Workshop Manual, Prevention of Significant Deterioration and Nonattainment Area Permitting, Draft, October 1990. Available at: <http://www.epa.gov/ttn/nsr/gen/wkshpman.pdf>.