

us, at the time of such failure, that it is reverting to the traditional nonattainment requirements under appendix S. We also request comment on any other findings which should end eligibility for the transitional program.

5. Will a State Be Required To Assure That the Increased Emissions From a new Major Source Do Not Cause or Contribute to a Violation in a Nearby Nonattainment Area Before It Issues a Preconstruction Permit Under Appendix S?

At the current time, EPA allows the State to presume that a source locating outside a designated ozone nonattainment area will have no significant impact on the designated nonattainment area. See section III of appendix S. However, given the recent advances in the scientific understanding of ozone formation, we may revise these guidelines in the near future. In the meantime, under the PSD rules, States may choose to address the impacts of sources in attainment areas on nearby nonattainment areas in a more proactive manner; *i.e.*, through PSD offsets and/or tighter emission controls when the source is shown to contribute to a violation of the NAAQS.

6. What Happens at the End of the Interim Period?

a. *Transitional NSR areas.* As noted above, this transitional option is only intended to apply to certain nonattainment areas that expect to attain the 8-hour ozone NAAQS within 3 years after designation. Therefore, we expect these areas to be in attainment on or before an attainment date in 2007. Accordingly, States must submit, by the attainment date in 2007, an attainment demonstration with a maintenance plan. A State may continue implementing transitional NSR under appendix S, section VI for 6 months following submission of its attainment plan, or until its attainment plan is approved, whichever is earlier.

b. *Traditional NSR areas.* If a State has never been or is no longer operating under a section VI transitional program, it must submit a part D nonattainment NSR plan within 3 years after designation (in 2007). The State may continue implementing traditional part D nonattainment requirements under appendix S until we approve its part D plan.

7. What Is the Legal Basis for Providing This Transitional Program?

As stated earlier, appendix S applies during the period after an area is designated nonattainment but before a part D nonattainment NSR plan is due

under subparts 1 and 2 of part D. Application of appendix S during this interim period ensures compliance with the section 110(a)(2)(C) "minor" NSR program. However, Congress was ambiguous regarding what specific requirements States must follow for issuing major source permits during the interim period described above. Thus, we have discretion to interpret those regulations in a reasonable manner. *Chevron, U.S.A. v. NRDC*, 467 U.S. 837 (1984).

The transitional appendix S approach is reasonable for several reasons. First, it would be available only for those areas that are already attaining the 1-hour standard and that will attain the 8-hour standard within 3 years after designation (before a part D nonattainment NSR SIP revision is due) through national and regional planning. These areas appropriately deserve a different approach for implementing the section 110(a)(2)(C) requirements than areas that are in nonattainment for the 1-hour standard and thus currently implementing NSR, or those areas that are not projected to reach attainment of the 8-hour in the short term.

We believe that the transitional option, as we have constructed it, would result in a level of emissions reductions that is substantially similar to the level that would be achieved from traditional NSR for the small number of sources it will affect in the short period during which these areas are designated nonattainment. Thus, these transitional areas would still be implementing a program that regulates the modification and construction of any stationary source "as necessary" to assure that the NAAQS are achieved as expeditiously as practicable.

Currently, the language of section VI allows all States to exempt a new major source from complying with the requirement to install LAER and obtain offsets if the source will meet all other applicable SIP requirements and not interfere with the area's ability to meet its attainment date. However, we plan to revise section VI to remove this general exemption and apply the transitional approach. This revision is appropriate because we do not believe that areas not meeting the transitional approach would be able to ensure that they were implementing an NSR program "as necessary" to ensure the attainment of the NAAQS without complying with appendix S in general (*e.g.*, sections I–V). Note that section VI of appendix S originally applied only to secondary NAAQS, and we revised section VI to include primary standards following the 1977 Amendments. The exemption provided by section VI applied to areas

whose attainment dates were shortly after the CAA was re-authorized in 1977 because these areas had already submitted their attainment plans to us, and we believed that these areas would reach attainment without having to impose LAER and offsets on new major sources.

While nonattainment areas that qualify for the 8-hour ozone standard NSR transitional option are in a similar situation, areas not qualifying for the transitional approach are not. In order to qualify for the NSR transitional option, States will have to submit an attainment plan by the date of designation for the 8-hour NAAQS in 2004. These plans must commit the State to implement by December 31, 2005, all measures necessary to bring the nonattainment area into attainment and to meet a 2007 attainment date.⁷³ Similar to the nonattainment areas to which section VI originally applied, we believe that nonattainment areas which qualify for the NSR transitional option will be able to meet a 2007 attainment date without imposing LAER and offsets on new major sources.

On its surface, section VI's existing language could be applied in any nonattainment area during the interim period. For an area that fails to meet the transitional option requirements, however, we believe that the area would not be able to show that it will continue to meet the areas attainment date if it does not apply LAER or obtain offsets. Thus, we are proposing to revise the language of section VI to apply only in areas qualifying for the transitional NSR program.

8. How Should the NSR Requirements Be Implemented for New 8-Hour Ozone Areas that Encompass the Old 1-Hour Ozone Nonattainment Areas After EPA Revokes the 1-Hour Ozone Standard?

Newly-designated 8-hour ozone areas which include areas which have never attained the 1-hour standard will have two different sets of requirements in place until a point in time proposed elsewhere in this proposed rulemaking under the anti-backsliding provisions. (There are two options proposed in the anti-backsliding section of this proposal for that point in time—until either the level of the 1-hour ozone standard is achieved or the 8-hour ozone standard is attained.) The 1-hour NSR requirements and higher offset ratios (if applicable) will remain in place in the area that was designated nonattainment

⁷³ The actual attainment date—as proposed elsewhere in this proposed rulemaking—would be 3 years after the effective date of nonattainment designation, which we anticipate will occur in the spring of 2004.