

Tribe to develop an appropriate schedule which meets the needs of each Tribe, and which does not interfere with the attainment of the NAAQS in other jurisdictions. The Tribe developing a TIP can work with the EPA Regional Office on the appropriateness of applying RFP and other SIP requirements that may or may not be appropriate for the Tribe's situation.

The TAR indicates that EPA is ultimately responsible for implementing CAA programs in Indian country, as necessary and appropriate, if Tribes choose not to implement those provisions. For example, an unhealthy air quality situation in Indian country may require EPA to develop a FIP to reduce emissions from sources on the reservation. In such a situation, EPA, in consultation with the Tribe and in consideration of their needs, would work to ensure that the NAAQS are met as expeditiously as practicable. Likewise, if we determine that sources in Indian country could interfere with a larger nonattainment area meeting the NAAQS by its attainment date, we would develop a FIP for those sources in consultation with the Tribe, as necessary and appropriate.

The TAR also provides flexibility for the Tribe in the preparation of a TIP to address the NAAQS. If a Tribe elects to develop a TIP, the TAR offers flexibility to Tribes to identify and implement—on a Tribe-by-Tribe, case-by-case basis—only those CAA programs or program elements needed to address their specific air quality problems. In its proposed Tribal rule, we described this flexible implementation approach as the “modular approach.” Each Tribe may evaluate the particular activities, including potential sources of air pollution within the exterior boundaries of its reservation (or within non-reservation areas for which it has demonstrated jurisdiction), which cause or contribute to its air pollution problem. A Tribe may adopt measures for controlling only those sources or ozone precursor emissions, as long as the elements of the TIP are “reasonably severable” from the package of elements that can be included in a whole TIP. A TIP must include regulations designed to solve specific air quality problems for which the Tribe is seeking EPA approval, as well as a demonstration that the Tribal air agency has the authority from the Tribal government to develop and run their program, the capability to enforce their rules, as well as the resources to implement the program they adopt. In addition, the Tribe must receive an “eligibility determination” from EPA to be treated in the same manner as a State and to

receive authorization from EPA to run a CAA program.

We would review and approve, where appropriate, these partial TIPs as one step of an overall air quality plan to attain the NAAQS. A Tribe may step in later to add other elements to the plan, or EPA may step in to fill air quality gaps as necessary and appropriate. In approving a TIP, we would evaluate whether the plan interferes with the overall air quality plan for an area when Tribal lands are part of a multi-jurisdictional area.

Because many of the nonattainment areas will include many jurisdictions, and in some cases both Tribal and State jurisdictions, it is important for the Tribes and the States to work together to coordinate their planning efforts. States need to incorporate Tribal emissions in their base emission inventories if Indian country is part of an attainment or nonattainment area. Tribes and States need to coordinate their planning activities as appropriate to ensure that neither is adversely affecting attainment of the NAAQS in the area as a whole.

S. What Are the Requirements for OTRs Under the 8-Hour Ozone Standard?

Section 176A of subpart 1 provides the authority to establish interstate transport regions where transport of air pollutants from one or more States contributes significantly to a violation of a NAAQS in one or more other States. When a transport region is established, section 176A requires that a transport commission, comprised of representatives from the States in the transport region, also be established. The role of the transport commission is to assess the degree of interstate transport of the pollutant and precursors throughout the transport region and to evaluate strategies for mitigating the interstate pollution.

Section 184 of subpart 2 establishes additional provisions for OTRs. Section 184(a) specifically established an OTR comprising 12 Northeast and Mid-Atlantic States and the District of Columbia in order to address the longstanding problem of interstate ozone pollution in that region. The general provisions of section 176A apply to any OTR established under section 184. To date, the existing OTR is the only transport region for any pollutant that has been established and is subject to the section 176A requirements.

Section 184(b) of subpart 2 sets forth specific VOC and NO_x control requirements to be applied throughout the entire OTR, in both attainment and nonattainment areas, to reduce

interstate pollution. These additional regional control requirements are part D NSR (for VOC and NO_x), RACT (for VOC and NO_x), enhanced vehicle I/M, and Stage II vapor recovery (for vehicle refueling) or a comparable measure. Some of these requirements duplicate requirements for ozone nonattainment areas that are classified under subpart 2.

We believe the clearest legal interpretation of section 184 is that the current OTR and section 184 control requirements apply for purposes of the 8-hour standard. We believe that this interpretation would not result in any new control requirements for any area in the OTR because these control requirements are not associated with an area's designation or classification and already apply regionwide under the 1-hour ozone standard. Rather, these statutory obligations would remain in place for areas in the existing OTR. If a new OTR is established for purposes of the 8-hour standard pursuant to section 176A, that area would also be subject to the provisions and additional control requirements of section 184.

Because all areas in the existing OTR, including attainment areas, are subject to part D NSR for NO_x and VOC and a number of other control measures, areas in the OTR would not be able to take full advantage of either the transitional option proposed for NSR or the Agency's existing approach for early reductions, both of which are discussed elsewhere in this proposed rulemaking.

T. Are There Any Additional Requirements Related to Enforcement and Compliance?

Section 172(c)(6) requires nonattainment SIPs to “include enforceable emission limitations, and such other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment * * *.” The current guidance, “Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans (EPA-452/R-93-005, June 1993)” is relevant to rules adopted for SIPs under the 8-hour ozone NAAQS and should be consulted for purposes of developing appropriate nonattainment plan provisions under section 172(c)(6). This document provides States with guidance on how to prepare enforceable stationary and mobile source regulations for their ROP plans. Developing clear, concise, enforceable rules and establishing strong compliance programs helps to ensure that the emissions reductions projected for specific control strategies are actually achieved. The document