

1. We must determine, at the time of the redesignation, that the area has attained the relevant NAAQS.

2. The state must have a fully approved SIP for the area.

3. We must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions.

4. We must have fully approved a maintenance plan for the area under CAA section 175A.

5. The state must have met all the nonattainment area requirements applicable to the area.

It is possible, although not expected, that the Bay Area could violate the 1-hour ozone NAAQS before a maintenance plan is adopted, submitted, and approved, and the area is redesignated to attainment. If such a violation were to occur after our finding of attainment, and if expedited implementation of contingency measures were to prove insufficient to eliminate future violations, we believe that issuance of a SIP call under section 110(k)(5) would be an appropriate response. This SIP call could require the State to submit, by a reasonable deadline not to exceed 18 months, a revised plan demonstrating expeditious attainment and complying with other requirements applicable to the area at the time of this finding.

In proposed implementation guidance for the 8-hour ozone NAAQS, we have also discussed other options for areas that have attained the 1-hour ozone standard but subsequently violate the 1-hour NAAQS in the transition period before implementation of the 8-hour ozone SIP provisions. EPA's final guidance may establish approaches for ensuring continued clean air progress while minimizing any inefficiencies and diversions of air quality planning resources.

II. Applicability of Clean Air Act Planning Requirements

A. EPA's Policy and Its Legal Basis

When we redesignated the Bay Area back to nonattainment, we concluded that the Bay Area became subject to the provisions of subpart 1 rather than subpart 2 of the Clean Air Act. 63 FR 37258 (July 10, 1998). CAA subpart 1 at section 172(c) requires states to submit plans with certain revisions. These provisions include: emissions inventories, attainment demonstration, reasonable further progress (RFP), reasonably available control measures

(RACM), contingency measures, and new source review (NSR).

For the reasons described below and discussed in our Ozone Clean Data Policy, we believe that it is reasonable to interpret the CAA not to require the 3 provisions discussed below for ozone nonattainment areas that are determined to be meeting the 1-hour ozone standard.⁹

1. Reasonable Further Progress

CAA Section 171(1) states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, the stated purpose of RFP is to ensure attainment by the applicable attainment date. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.

Consequently, we do not believe that a state needs to submit revisions providing for the further emission reductions to meet the RFP provisions of section 172(c)(2) for areas meeting the 1-hour ozone standard. We note that we took this view with respect to the general RFP requirement of section 172(c)(2) in our "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990" at 57 FR 13498 (April 16, 1992). In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State

will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR 13564.) See also "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992 ("Calcagni memo") (<http://www.epa.gov/ttn/naaqs/ozone/ozonetech/940904.pdf>). The memo states that the "requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard" (page 6).

2. Attainment Demonstration

Analogous reasoning applies to the attainment demonstration requirement. Section 172(c)(1) requires that a state submit a SIP revision that will provide for attainment of the NAAQS. If an area has in fact monitored attainment of the standard based on existing controls, we believe that it is not necessary for the state to make a further submission containing additional measures or demonstrations to show attainment.

This belief is also consistent with our interpretation of certain section 172(c) requirements in the General Preamble to Title I, where we stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR 13564; see also Calcagni memo at page 6.)

Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

3. Contingency Measures

CAA section 172(c)(9) requires a state to submit contingency measures that will be implemented if an area fails to make RFP or fails to attain by the applicable attainment date. We have previously interpreted the contingency measure requirement of section 172(c)(9) as no longer applying once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date." See 57 FR 13564; see also the Calcagni memo at page 6.

4. Remaining Nonattainment Area SIP Requirements

A number of CAA subpart 1 SIP requirements for nonattainment areas are not tied to whether the area has attained the 1-hour standard. The State remains obligated to submit these requirements for the Bay Area even if

⁹ See memorandum, John S. Seitz, Director, OAQPS, EPA, to Regional Air Directors, "Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," May 10, 1995 (<http://www.epa.gov/ttn/oarpg/t1/memoranda/clean15.pdf>). We have also explained at length in other actions our rationale for the reasonableness of this interpretation of the Act and incorporate those explanations by reference here. See 61 FR 20458 (May 7, 1996) (Cleveland-Akron-Lorain, Ohio); 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah); 60 FR 37366 (July 20, 1995) and 61 FR 31832-31833 (June 21, 1996) (Grand Rapids, MI); and 65 FR 31859 (May 19, 2000) and 66 FR 29230 (May 30, 2001) (Phoenix, Arizona). Our interpretation has also been upheld by the United States Court of Appeals for the 10th Circuit in *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996) (<http://www.law.emory.edu/10circuit/nov96/95-9541.wpd.html>).