

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-5659-3]

RIN 2060-AF34

Interim Implementation Policy on New or Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Policy (NPP).

SUMMARY: This document is to propose a policy regarding interim implementation requirements for ozone and PM air pollution control during the time period following promulgation of new or revised NAAQS. Elsewhere in today's Federal Register, EPA is proposing these NAAQS. The policy as proposed is intended to ensure momentum is maintained by the States in the current program while moving toward developing their plans for implementing the new NAAQS. An explanation and structure of the Federal Advisory Committee Act (FACA) Subcommittee for Ozone, PM and Regional Haze Implementation Programs (Subcommittee) is provided under **SUPPLEMENTARY INFORMATION**.

DATES: Written comments on this proposal must be received by February 18, 1997.

ADDRESSES: *Comments.* Comments on this proposal should be submitted (in duplicate if possible) to the Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460, Attention Docket Number A-95-38. *Docket.* The public docket for this action is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center (6102), Attention Docket A-95-38, South Conference Center, Room 4, 401 M Street, SW, Washington, DC 20460. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: For general FACA Subcommittee questions and comments, contact Ms. Denise Gerth, U.S. EPA, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-5550. For specific questions and comments on the NPP, contact Ms. Sharon Reinders, U.S. EPA, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-5284.

SUPPLEMENTARY INFORMATION: The following communications and outreach mechanisms have been established:

Overview information—A World Wide Web (WWW) site has been developed for overview information on the NAAQS and the ozone, PM, and regional haze (RH) FACA process. The Uniform Resource Location (URL) for the home page of the web site is <http://www.epa.gov/oar/faca/>.

Detailed and technical information—Available on the O3/PM/RH Bulletin Board on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN), which is a collection of electronic bulletin board systems operated by OAQPS containing information about a wide variety of air pollution topics. The O3/PM/RH Bulletin Board contains separate areas for each of the FACA Subcommittee's five work groups and includes meeting materials, issue papers, as well as general areas with information about the process, participants, etc. The TTN can be accessed by any of the following three methods:

- By modem: the dial-in number is (919) 541-5742. Communications software should be set with the following parameters: 8 Data Bits, No Parity, 1 Stop Bit (8-N-1) 14,400 bps (or less).
 - Full Duplex.
 - ANSI or VT-100 Terminal Emulation.
- The TTN is available on the WWW site at the following URL: <http://tnwww.rtpnc.epa.gov/html/ozpmrh/facahome.htm>. The TTN can also be accessed on the Internet using File Transfer Protocol (FTP); the FTP address is tnftp.rtpnc.epa.gov. The TTN Helpline is (919) 541-5384.

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Purpose and Objectives

This notice proposes an interim implementation policy associated with the potential revision of the ozone and PM NAAQS. The interim implementation policy is the guidance that EPA will use to continue to implement the ozone and PM-10 nonattainment programs. The ozone and PM NAAQS are proposed elsewhere in today's Federal Register. The EPA intends to propose a regional haze program in mid-1997. Although EPA is undertaking a notice and comment process regarding the interim implementation policy, the interim implementation policy would nevertheless be a policy to be implemented through subsequent rulemaking actions, e.g., findings or other actions regarding SIP submittals from the States. Thus, the interim implementation policy would represent EPA's preliminary views on these issues and, while it may include various statements that States must take certain actions, these statements are made pursuant to EPA's preliminary interpretations, and thus do not bind the States and public as a matter of law. Only after EPA has made its interpretations final through rulemaking will they be binding on the States and public as a matter of law. Such rulemaking will follow the requirements of the Administrative Procedure Act, 5 U.S.C. section 553(b) and (c), and in some cases may rely on the "good cause" exception in 5 U.S.C. section 553(b)(B).

In advance of these actions, the EPA published an advance notice of proposed rulemaking (ANPR) entitled, "National Ambient Air Quality Standards for Ozone and Particulate Matter," on June 12, 1996 (61 FR 29719) which announced the EPA's plans to propose decisions on whether to retain or revise the ozone and PM NAAQS. That ANPR also described the FACA Subcommittee process established under the Clean Air Act Advisory Committee (CAAAC) to provide advice and recommendations to the EPA on developing new, integrated approaches for implementing potential revised NAAQS for ozone and PM, as well as a new regional haze reduction program. The Subcommittee is composed of representatives from State, local and tribal organizations, environmental groups, industry and trade groups (including small business representatives), consultants, academic/

scientific communities, and Federal agencies. The organization of the Subcommittee includes a Coordination Group and four work groups: (1) Base Programs Analyses and Policies Work Group, (2) National and Regional Strategies Work Group, (3) Science and Technical Support Work Group, and (4) Communications and Outreach Work Group. Through this process, EPA is engaging in communications with segments of society that may be affected by the implementation of NAAQS and the regional haze program.

Elsewhere in today's Federal Register, the EPA is also publishing an ANPR entitled, "Implementation of New or Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations," which outlines policy and technical implementation issues and principles, and questions for issues associated with the potential revision of the ozone and PM NAAQS and the development of a regional haze program.

These notices are intended to invite stakeholders to participate in the implementation development process, to assure that their concerns will be addressed and their options assessed, and, ultimately, to increase the effectiveness of the NAAQS implementation strategies and regional haze reduction program that is established.

A. FACA Subcommittee Recommendations

The Subcommittee has provided advice and recommendations for consideration by CAAAC on implementation of specific programs covering the transition time period after new or revised NAAQS are promulgated. The EPA is taking the advice and recommendations that the Subcommittee recommended for consideration by the CAAAC into consideration in this proposal. Where the Subcommittee reached broad agreement in their recommendations, EPA is accepting the recommendations. In other situations where the Subcommittee may not have reached broad agreement, EPA is modifying the recommendations. Where no specific recommendations were made, EPA is following the general philosophy that is invoked by the other recommendations. The recommendations and advice of the FACA Subcommittee provide the foundation of today's proposal.

The EPA solicits comment on each element contained in this proposal and seeks additional suggestions on approaches to increase flexibility during the interim period to improve both air

quality and pollution reduction strategies with a change in the NAAQS. Consistent with long-standing EPA policy, States have the ability to propose case-by-case modifications to their plans which could make equivalent or improved environmental progress. The EPA will review and rulemake on these through the normal SIP revision process. Consistent with this, EPA solicits comment on whether, and how, to allow flexibility to control programs during the timeframe of the IIP to allow additional substitutions and/or modifications to existing control programs. Additionally, EPA seeks comment on the relevant criteria, such as air quality impact, emission reductions, risk and population exposure, cost-effectiveness, and transport impacts, it should employ during the evaluation of such SIP revisions. The reader is directed to the interim policy portion of this notice for further details.

Recognizing the merit of market-based solutions to pollution control, in 1994, EPA issued the economic incentive program (EIP) rule, which provides rules and guidance for establishing economic incentive programs. The EIP remains available to be used in coordination with this policy as part of the States' plans to reduce pollution and achieve the new NAAQS.

B. Basis for the Interim Implementation Policy

The EPA interprets the relevant portions of the Clean Air Act (Act) to provide that the general planning requirements of part A of title I and the basic nonattainment planning requirements of subpart 1 of part D of title I govern the implementation of a new or revised NAAQS. The detailed provisions of subparts 2 and 4 of part D that currently apply to ozone and PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) nonattainment planning would not apply directly to the implementation of a new ozone NAAQS or a new fine particle NAAQS, but would continue to apply during the interim period after promulgation of a new or revised NAAQS to the extent they are retained under a no-backsliding principle and to the extent they are needed to comply with the general obligations of subpart 1. The provisions of subpart 4, however, would apply to the implementation of a new or revised PM-10 NAAQS. Furthermore, with regard to a no-backsliding principle, section 110(l) provides that EPA may not approve revisions to SIP's that interfere with requirements to attain or make reasonable further progress (RFP)

or with any other applicable requirements of the Act.

The basis for the view that the specific requirements of subparts 2 and 4 do not apply directly in the case of the implementation of a new or revised ozone NAAQS, or in the implementation of a fine particle NAAQS, lies in the language and structure of those subparts, which are clearly and explicitly tied to the 1-hour ozone NAAQS in existence at the time of the enactment of the 1990 Amendments to the Act in the case of subpart 2, and to a PM-10 NAAQS in the case of subpart 4. The provisions of subpart 1, however, apply to the implementation of any NAAQS, including revisions to NAAQS in effect at the time of the 1990 Amendments. For example, the current ozone classification scheme of subpart 2, which forms the basis for the control requirements and attainment dates for nonattainment areas, is explicitly linked with the 1-hour NAAQS while section 172(a)(1) explicitly authorizes that EPA may establish a new classification system with respect to a revision of a NAAQS. Subpart 4 expressly applies only to PM-10. Thus, as subparts 2 and 4 are limited in direct applicability to the 1-hour ozone NAAQS and PM-10 NAAQS respectively, only subpart 1 directly applies to implementation of new or revised ozone NAAQS or a fine particle NAAQS in nonattainment areas. Because the provisions of subpart 4 are not linked to a specific PM-10 NAAQS (in contrast to subpart 2's linkage to one specific ozone NAAQS), the provisions of subpart 4 would apply to the implementation of a revised PM-10 NAAQS.

Of critical importance, however, is that subpart 1, in addition to the general obligations of section 172(c), includes a no-backsliding principle operative in the event of revisions to a NAAQS. Section 172(e) of the Act clearly provides that a no-backsliding principle should apply upon a relaxation of an existing NAAQS. It provides that EPA is to conduct a rulemaking within 12 months of the promulgation of a relaxed NAAQS to promulgate requirements applicable to areas not attaining the existing standard that will provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.

The EPA believes that a no-backsliding principle is even more important and by implication was intended by the Act to be a governing principle when an existing NAAQS is strengthened, as is the case with ozone. However, the Act does not expressly

address how to implement the no-backsliding principle before the new NAAQS is implemented through the SIP program. Therefore, in order to provide greater assurance that the currently existing and required control measures will continue to be implemented until the implementation program for the new ozone NAAQS actually begins, which will probably not occur for several years, EPA is proposing (in the NAAQS proposal published elsewhere in today's Federal Register) that the effective date of the revocation of the existing ozone NAAQS (the 1-hour standard) be deferred until EPA determines that an area has a SIP that provides for the achievement of the new NAAQS. This deferral of the effective date would be on a case-by-case basis, e.g., once an attainment demonstration for the new ozone NAAQS is approved for a particular nonattainment area or EPA determines that a SIP for an attainment area meets the requirements of section 110(a)(1), the existing 1-hour ozone standard NAAQS would no longer be in effect as to that area. This will provide greater assurance that the air quality benefits of the existing ozone NAAQS implementation program, which EPA believes are necessary to attain and maintain the potential new or revised ozone NAAQS, will be retained, than would reliance solely on a no-backsliding principle implemented administratively through the general provisions of subpart 1 of part D of the Act.

The purposes for which EPA is not deferring the effective date of the revocation of the existing ozone NAAQS are those for which EPA believes it is not necessary or desirable to retain the existing NAAQS as part of a transition from the old to the new ozone NAAQS. These exceptions are twofold: (1) The requirement to demonstrate attainment of the existing NAAQS by the attainment dates set forth in subpart 2 of part D, and (2) the provisions regarding the reclassification of areas upon a failure to attain the current ozone standard by the applicable attainment dates in subpart 2. The EPA believes it is appropriate to exempt the first requirement from the general deferral of the effective date of the revocation of the existing NAAQS since its focus is on demonstrating attainment of the existing NAAQS as of a certain date—which will be superseded by a new requirement to attain the new NAAQS by new dates. The EPA believes it is appropriate for areas to shift their efforts to develop attainment demonstrations from the existing NAAQS to the new NAAQS. With

respect to the second requirement, EPA believes that while areas should have to continue with the implementation of the control measure programs required as of the date a new NAAQS is promulgated, they need not have to comply with the additional specified control measures that they would have been subject to had they been reclassified in accordance with the provisions of subpart 2. As described below, EPA is relying on an independent basis for requiring these areas to achieve the same rate of progress in terms of emission reductions that they would have had to achieve after a reclassification under subpart 2. For the reasons described therein, EPA believes these areas should have greater flexibility in adopting and implementing new control measures to achieve the same progress than if they were simply subject to the reclassification provisions of subpart 2.

Also, based in part on the Subcommittee's deliberations and recommendations, the EPA believes that rather than expending significant effort during this interim period to evaluate whether to retain or eliminate the various existing and required control measures in light of the potential new or revised NAAQS, States and stakeholders should focus their planning efforts on moving forward to attain the new NAAQS rather than reevaluating prior planning decisions.

C. Interim Policy

1. Effective Dates

The interim policy that EPA is proposing in this notice is intended to take effect on the date of the NAAQS promulgation and remain as to each area until the effective date of EPA approval of the SIP revision for achievement of the new NAAQS. The EPA believes that approval rather than submission of a SIP is appropriate because submission of a new SIP alone provides neither sufficient assurance to allow the requirements in the currently EPA-approved SIP to be changed nor a sufficient legal basis for revising, amending or deleting requirements in a SIP that had been previously approved by EPA. The EPA notes that SIP's are approved through rulemaking action by EPA and thereby become Federal rules that are incorporated in the CFR. In order to revise such Federal rules, through a revision to a SIP, further EPA rulemaking action must be taken. Thus, EPA is proposing that the effective dates for the interim policy are from the date of NAAQS promulgation to the effective date of EPA approval of the new SIP for each area to achieve the new NAAQS. The length of time this policy remains

in effect could be several years and depends on the time necessary for States to develop new SIP's and be approved by EPA.

This interim policy is not intended to apply to new attainment demonstrations and SIP submissions made to implement a new NAAQS which occurs after areas have undergone designations under section 107(d)(1) with respect to a new NAAQS. Further policy, guidance, and/or rules will be developed following further deliberations of the FACA that will apply to such submissions.

2. Designations, Redesignations and Classifications

In section 107(d)(1)(B)(iv), the Act provides that existing ozone and PM-10 designations remain in effect until areas are redesignated pursuant to section 107(d)(3). By analogy, EPA believes it is reasonable for such designations to remain in effect after promulgation of new NAAQS until new designations are undertaken after promulgation of the new NAAQS. In addition, in the case where the current ozone NAAQS would remain in effect, the designations would remain in effect so long as the current 1-hour ozone NAAQS remains in effect. No similar provision exists for classifications, however. Nevertheless, as classifications are linked with the control requirements applicable to the nonattainment areas, they should continue to have force inasmuch as they determine the control requirements applicable for purposes of applying the no-backsliding principle. In particular for ozone, because the existing NAAQS would remain in effect, the classifications remain in effect as well. Since classifications continue, control measures required for a specific classification in policy or guidance continue to apply.

a. Ozone

The EPA is proposing that ozone nonattainment areas with clean air quality data at the time of promulgation of the new or revised ozone NAAQS may be redesignated to attainment provided they satisfy the criteria of section 107(d)(3)(E) including having a fully-approved SIP, meeting all applicable requirements and an approved maintenance plan. Any redesignation action taken on areas currently designated attainment or nonattainment does not preclude EPA from taking future action with respect to these areas in the new round of designations that will address the new or revised NAAQS.

The following two scenarios would apply to existing ozone nonattainment

areas that wish to redesignate to attainment:

(1) Requests Submitted and EPA Approved Prior to Promulgation

Complete redesignation requests and maintenance plans for ozone nonattainment areas submitted prior to the promulgation date of the new or revised ozone NAAQS will be allowed to redesignate to attainment prior to promulgation of the new or revised ozone NAAQS upon approval of the maintenance plan provided that all available air quality data show attainment of the current 1-hour NAAQS. Therefore, any requests submitted prior to promulgation of the new NAAQS, which are not finally approved by EPA, will be processed according to scenario 2 below.

(2) Requests Submitted and EPA Approved on or After Promulgation

Ozone redesignation requests and maintenance plans submitted on or after promulgation of the new or revised NAAQS will be evaluated in accordance with section 107(d)(3)(E). In this case, maintenance plans must demonstrate attainment and maintenance of the 1-hour NAAQS and the new or revised NAAQS.

The EPA also recommends that previously redesignated ozone nonattainment areas review their maintenance plans to determine if their contingency provisions need to be modified to reflect the promulgation of a new or revised NAAQS.

b. PM-10

The EPA is proposing that PM-10 nonattainment areas with clean air quality data at the time of promulgation of the new and/or revised PM standards be allowed to redesignate to attainment if they satisfy the criteria of section 107(d)(3)(E) including having a fully-approved SIP, meeting all applicable requirements, and a maintenance plan. Thus, in the event that the 24-hour PM-10 standard is revised, existing nonattainment areas could redesignate to attainment if they otherwise satisfy the criteria of section 107(d)(3)(E) and submit a maintenance plan which demonstrates attainment with a SIP-approved design value which is equivalent to or below the revised PM-10 24-hour standard. If the area has already submitted a redesignation request, it need not withdraw and revise it unless the existing redesignation request and maintenance plan do not demonstrate that the SIP-approved design value will be below the revised PM-10 24-hour standard. In such a case, they should resubmit a revised

redesignation request and maintenance plan that shows attainment and maintenance of the revised PM-10 standard.

In the event the PM-10 24-hour standard is eliminated, current nonattainment areas with clean air quality data at the time of promulgation would still be eligible to redesignate to attainment pending a submittal of a fully-approvable SIP demonstrating attainment of the PM-10 annual standard and the submittal of the maintenance plan under section 175A as required in section 107(d)(3)(E).

A nonattainment classification for PM-10 remains in effect until States can assess the impact of a revised PM-10 standard. In the case of PM-10, reclassification to serious is based on the inability of the area to practically attain the 24-hour and/or annual PM-10 NAAQS within the timeframes prescribed by the Act. Consistent with the no-backsliding principle, those areas which failed to attain the PM-10 NAAQS in 1994 should have been reclassified as serious PM-10 areas. Since the deadline by which to reclassify to serious was before the June 1997 NAAQS promulgation, the requirements for serious areas would still apply. Areas with attainment dates occurring during the interim period will not be reclassified during the interim period.

3. Program Requirements

a. Progress Requirements for Serious and Above Ozone Areas

The EPA believes that the current ROP requirements should continue until EPA has approved the new SIP for the new NAAQS. Section 182(c)(2)(B) provides specifically that ozone nonattainment areas classified as serious and higher under the current NAAQS must submit a SIP (post-1996 ROP plan) which provides for actual VOC or NO_x emissions reductions of at least 3 percent per year averaged over each consecutive 3-year period beginning November 15, 1996 until the area's attainment date. The due date for this SIP was November 15, 1994 under the Act, but was extended to the end of 1995 in the "Ozone Attainment Demonstrations," memorandum from Mary D. Nichols to Regional Administrators, March 2, 1995 (March 2, 1995 policy statement).

For ten States and the District of Columbia, EPA, by rulemaking published July 10, 1996 (61 FR 36292), made findings of failure to submit for (1) the first 9 percent of the post-1996 ROP plan and (2) for those States with severe ozone nonattainment areas, the

commitment to adopt the additional post-1999 ROP control measures. This is discussed more fully below under July 1996 Findings Issued by EPA.

For ozone nonattainment areas classified as severe and higher, EPA believes that the post-1996 ROP plan should still include emissions reductions after 1999 in the event the new SIP's to attain the new NAAQS are delayed. Therefore, EPA is proposing to continue the requirement for an average of 3 percent per year ROP post-1999 until SIP's to attain the new NAAQS are approved by EPA. Although this represents a modification of the current requirement to provide for 3 percent-per-year ROP until the applicable attainment dates, EPA believes this is reasonable in light of a new NAAQS and the shift to planning for attainment of that NAAQS.

As mentioned above, the commitment to adopt the additional post-1999 ROP rules for the severe areas was due at the end of 1995, and EPA has made findings appropriately. However, the rules for the completion of the post-1999 ROP should be identified with the second SIP submittal, as described in the March 2, 1995 policy statement. That submittal is described below under Attainment Demonstration.

The March 2, 1995 policy statement indicates that States may phase-in adoption of the rules to provide for implementation of measures for post-1999 ROP beginning in the period immediately following 1999. Thus, these rules should be submitted to EPA no later than the end of 1999. The EPA believes these requirements will facilitate reasonable progress in the interim period.

Areas with ROP plans approved by EPA, such as certain areas in California, should continue to implement the ROP requirements of their SIP's.

For international border areas, EPA may continue to approve a SIP that establishes that the implementation of the plan would be adequate to attain and maintain the relevant NAAQS but for emissions emanating from outside the United States. Under these circumstances, States would be allowed to defer the adoption of a post-1996 ROP plan.

b. Attainment Demonstrations

(1) Ozone

Serious and Higher Classified Areas

Ozone attainment demonstration SIP's for serious and higher classified areas were due November 15, 1994. The EPA recognized that many of these serious and above ozone nonattainment areas were unable to complete SIP

requirements within schedules prescribed in the Act due to circumstances beyond their control. Of special concern was the influence of regional transport of ozone and its precursors on urban areas' ability to demonstrate attainment.

Through the March 2, 1995 policy statement, EPA provided States with a two-phased SIP submittal process which would allow additional time for States to perform an assessment of regional transport and its impact on urban areas. Areas that have adopted certain specified control measures and made appropriate commitments to interstate activities to study and address ozone transport are currently allowed until mid-1997 to submit full demonstration-of-attainment SIP's which take into account regional measures in nonattainment and attainment areas recommended by the interstate study to assess ozone transport.

The EPA believes that after promulgation of a new or revised ozone NAAQS, States should no longer be required to provide full demonstration-of-attainment SIP's for the 1-hour NAAQS; however, States are obliged to continue attainment planning toward the new NAAQS. The EPA believes that the full development of SIP's to attain the current 1-hour NAAQS is not a critical component of the transition from the current NAAQS to the new NAAQS, and that it would be advantageous for States to continue to achieve the required ROP while shifting their planning efforts toward satisfying the requirement to demonstrate attainment of the new ozone NAAQS.

Accordingly, the EPA proposes the following program elements related to attainment demonstrations: (1) That regional control measures identified (as discussed below) to reduce regional transport and support urban attainment planning and demonstrations be adopted and implemented in accordance with current programs; (2) that States submit the urban modeling analysis to establish the NO_x and VOC percent reductions but not the specific measures necessary to attain the 1-hour NAAQS by the attainment dates set forth in subpart 2; and (3) that within 90 days of promulgation of a revised NAAQS, States submit to EPA an early assessment of attaining the revised NAAQS by estimating the NO_x and VOC percent reductions needed to attain the revised NAAQS by those dates. This is discussed further below under Methods. States would not at this time be required to adopt and submit to EPA specific control measures to attain the new or revised ozone NAAQS. The first two elements described above,

currently under way, will be useful to lay the groundwork for assembling attainment demonstrations for the new NAAQS. In the future, the EPA will prescribe new requirements for modeling demonstrations and SIP's to address the new or revised NAAQS.

Methods

The EPA believes that 90 days is a reasonable period of time for the early assessment. The early assessment should utilize information that is or will be generated through the current requirement for States' SIP attainment demonstration analyses. No new modeling runs are required for the early assessment beyond what is currently required for attainment demonstrations. Using the modeling results from the early assessment, States are expected to review the results to determine the effectiveness of the NO_x and VOC measures identified towards attaining the revised NAAQS. From this review, States are expected to estimate the levels of emission reductions needed to attain the revised NAAQS.

It is expected that the early assessment will require processing of existing modeling results. Two methods are being proposed. The first method results in a set of NO_x and VOC reductions needed to attain the revised NAAQS. For this method, it is assumed that States have performed a series of NO_x and VOC reduction runs and are able to generate an ozone response curve. The modeling required to produce the percent reductions to attain the 1-hour standard may be used to calculate predicted values (at each grid cell) for the revised standard. These values may then be used to quantitatively estimate the VOC and NO_x percent reductions necessary to attain the revised standard. This is typically done through the use of ozone response curves which show predicted changes in ozone as a result of changes in VOC and NO_x emissions in the inventory.

The second method results in an analysis of the effectiveness of a specific NO_x/VOC strategy toward attaining the revised NAAQS. Some areas may elect to model a specific strategy rather than a matrix of NO_x and VOC reductions to demonstrate attainment of the current NAAQS. For example, a State may elect to demonstrate attainment by modeling the impact of the regional control measures along with a local strategy (i.e., 9 percent ROP). In this case, the series of NO_x and VOC reduction runs are not needed to demonstrate attainment of the current NAAQS. For the second method, modeling results from the final attainment strategy run

may be used to calculate the predicted values (at each grid cell) for the revised standard. These values may be used to produce the number of grid-cell-hours above the standard, display the spatial extent of daily maximum values above the revised standard, and determine the peak value predicted. This information may then be used to estimate the NO_x and VOC reductions needed to attain the revised NAAQS.

The early assessment will give States/local agencies and EPA an appreciation for the magnitude of possible additional controls needed to attain the revised standard. State/local agencies and EPA could use this information to begin preparations for development of a revised SIP to attain the new NAAQS.

It is EPA's intention that States that fail to submit the 90-day preliminary estimate be subject to a finding for failure to submit a required SIP element, which could subject the State to sanctions.

The EPA believes that regional control measures being identified in the current program to reduce regional transport and support attainment planning are critical to attainment of the current NAAQS and the new or revised NAAQS. These regional control measures are intended to reduce levels of ozone and its precursors over a larger geographic area rather than a single nonattainment area. Thus, these measures are applicable in rural areas or attainment areas and could also include measures needed in urban and nonattainment areas. The EPA reaffirms the importance of regional measures during the interim period. The EPA expects that these measures will promote progress toward attainment of the new NAAQS and, therefore, should be implemented. The EPA intends to work with all affected States to ensure that the required reductions are achieved. The EPA will address this issue more specifically in future guidance or rulemaking.

(2) PM-10

All moderate and serious area PM-10 attainment demonstration SIPs should have been submitted prior to the June 1997 promulgation of the revised PM-10 NAAQS. While the majority of the nonattainment areas have satisfied this requirement, there are still quite a few areas that have not. Consistent with the no-backsliding principle, EPA believes that areas that failed to submit an attainment demonstration during the 1991-1997 timeframe should still be required to satisfy relevant PM-10 requirements. Thus, specifically for PM-10, EPA is requiring the attainment demonstration, *not* for the purpose of

meeting the attainment demonstration requirement per se, but instead only for purposes of defining the appropriate level of RACM or BACM so that EPA can prevent RACM or BACM backsliding.

c. July 1996 Findings Issues by EPA—Ozone

By notice published July 10, 1996 (61 FR 36292), EPA issued three findings (the "July 10, 1996 Findings") for nine nonattainment areas in ten States and the District of Columbia (note that serious areas only received the first and third findings). These were for failure to submit: (1) A SIP provision for fully adopted rules requiring emissions reductions of 9 percent in ozone precursors from the end of 1996 to 1999, (2) a SIP commitment to adopt any additional rules needed to complete the requirements for ROP reductions after 1999 and until the attainment date, and (3) a SIP commitment to adopt additional measures needed for attainment of the 1-hour NAAQS.

The EPA interprets the July 10, 1996 findings as based not only on the requirements of section 182(c)(2) (A)–(B), which apply specifically to ozone nonattainment areas classified under the current NAAQS, but also on the requirements of section 172(c) (1)–(2), which apply generally to nonattainment areas. Specifically, the "reasonable further progress" requirement in section 172(c)(2) continues to be relevant.

Furthermore, EPA proposes to interpret the section 172(c)(2) "reasonable further progress" requirement as mandating VOC or NO_x reductions of 3 percent per year, averaged over a 3-year period, for ozone nonattainment areas classified under the current NAAQS that retain their nonattainment designation post-1996. The EPA believes that the requirement for 3 percent-per-year ROP found in section 182(c)(2)(B) indicates that the Act would have intended that this amount of progress continue in ozone nonattainment areas with this degree of air quality problem. Thus, the continuation of the ROP requirement is grounded in both the retention of the 1-hour ozone NAAQS (with the consequent effectiveness of section 182(c)(2)(B)) until SIP's implementing the new NAAQS are approved and the requirements of section 172(c) (1) and (2), under which EPA would apply the ROP requirements for anti-backsliding purposes.

Because the requirements of both section 182(c)(2)(B) related to the first 9 percent of the post-1999 ROP plan, and the comparable requirement of section 172(c)(2) continue to apply following

promulgation of a revised NAAQS, the first finding and associated sanctions and Federal implementation plan (FIP) clocks continue to apply. This finding concerns the first 9 percent of the post-1996 ROP plan.

The EPA proposes to modify the second finding which requires severe areas to submit a SIP commitment to adopt additional 3 percent average annual reductions from the end of 1999 through the attainment date. The EPA proposes to modify this finding to cover the obligation of the affected States to commit to submit the reductions which are required only from the end of 1999 until EPA approves the attainment SIP's addressing the revised NAAQS.

The EPA proposes to retract the third finding which is for a SIP commitment to adopt additional measures needed to attain the 1-hour NAAQS. As described above, EPA proposes to take the position that the requirement to demonstrate attainment of the 1-hour NAAQS no longer applies in light of the need for States to focus on planning to attain the new ozone NAAQS. The EPA proposes to replace the third finding with a finding to require that States submit the 90-day preliminary estimate described above. This estimate assists the State in developing both ROP plans and attainment plans under the revised NAAQS.

Depending on its review of any comments to this interim implementation policy including any comments from the CAAAC, EPA intends to promulgate the above-described revisions to the July 10, 1996 findings and new findings in subsequent rulemakings. Because the July 10, 1996 findings were made through rulemaking, modifications would similarly need to be made through rulemaking.

Previously-issued findings pertaining to other required elements in the ozone program are carried forward during the interim period.

d. New Requirements for Marginal and Moderate Areas—Ozone

The Act requires moderate ozone nonattainment areas to attain the 1-hour NAAQS by November 15, 1996. The EPA is proposing that States with moderate and any remaining marginal nonattainment areas that do *not* attain the 1-hour NAAQS by November 15, 1996, submit to EPA, within 18 months after promulgation of a new ozone NAAQS: (1) a plan to achieve an emission reduction of 9 percent (3 percent-per-year average ROP through 1999), or alternatively, an attainment demonstration for the new NAAQS; as well as (2) the new source review (NSR)

requirements as discussed below under New Source Review. Further, the EPA is proposing that all existing control measures that are in place, including those measures needed for the current moderate classified nonattainment areas to achieve 15 percent VOC ROP emission reductions through 1996, remain in place. The EPA believes that these requirements apply under section 172(c), paragraphs (1) (attainment demonstrations), (2) (reasonable further progress), and (5) (NSR). The applicability of paragraphs (1) and (2) of section 172(c) were discussed above. The EPA proposes to interpret paragraph (5), concerning NSR, as applicable for the same reasons.

The EPA believes that 18 months is a reasonable period of time for the States to make the required submission because much of the work required of the States should already have been completed under the requirements of the provisions of section 182(b)–(c) applicable to marginal and moderate nonattainment areas under the current NAAQS. Moreover, this period is generally consistent with the amount of time EPA allowed for submittal of new requirements when marginal areas were bumped up to moderate areas under the current NAAQS (59 FR 38410 (July 28, 1994), 59 FR 50848 (October 6, 1994) proposed and final bump-up of the Poughkeepsie, NY, marginal nonattainment area to moderate).

The EPA will conduct an early pre-designation determination within 90 days of promulgation of a new or revised ozone NAAQS using air quality data to evaluate if these marginal and moderate nonattainment areas are attaining the new NAAQS. The pre-designation determination will not affect the new round of designations and classifications that will occur after promulgation of new ozone NAAQS.

Two exceptions are discussed below:

(1) For areas not attaining the 1-hour NAAQS that are attaining the new NAAQS, EPA is proposing to defer implementation of the 9 percent ROP plans or the attainment demonstrations for the new NAAQS and the NSR requirements of the higher classification described above. However, the 9 percent ROP plan or attainment demonstration must still be adopted, submitted, and approved by EPA. The deferral continues as long as the area is showing attainment with the new NAAQS and until the SIP for the new NAAQS is approved. This is because the deferral is based on an early pre-designation determination and the SIP for the new NAAQS may require an ROP plan.

(2) An exception may also be granted for areas meeting the requirements for

an extension under the provisions of section 181(a)(5) of the Act. Under that section, the Administrator may grant an extension of the attainment date to areas that are not showing attainment if the area has: (1) met the requirements of the applicable implementation plan, and (2) has not recorded more than one exceedance of the ozone NAAQS in the year preceding the extension year. The EPA is proposing that areas failing to attain the ozone NAAQS by November 15, 1996 may be granted a 1-year extension.

e. Planning and Control Requirements—PM-10

As part of the no-backsliding principle, the EPA believes that if the PM-10 24-hour NAAQS is revised that, the PM-10 requirements and control programs required prior to the June 1997 promulgation date remain in place. Under the current program, 70 areas were initially designated as moderate nonattainment areas for PM-10. These areas were required to submit SIP's in November 1991 that included RACM/RACT and demonstrated attainment by December 31, 1994. Consistent with the no-backsliding principle, these areas must retain those PM-10 measures that have been adopted and/or implemented to address the annual and current 24-hour standard until the State demonstrates attainment of the PM-10 annual and revised 24-hour NAAQS. Also, PM-10 measures cannot be dropped without a demonstration that they are not needed to attain the fine particle NAAQS.

In the spring of 1995, EPA analyzed the air quality data and determined which areas were attaining the PM-10 standard as of December 31, 1994. At that time EPA determined:

- Out of the 43 areas with approved SIP's in place, 22 of the moderate areas had 3 years of clean air quality data making them eligible to redesignate to attainment pursuant to section 107(d)(3)(E).
- Thirteen of the 43 areas with approved SIP's in place qualified for a 1-year extension. These areas should be able to demonstrate attainment of the current PM-10 standard with 3 years of clean data prior to the June 1997 promulgation and should proceed with redesignation requests pursuant to section 107(d)(3)(E).
- Eight of the 43 areas with approved SIP's in place had clean, but incomplete, air quality data. Additional data needed to be collected before EPA could determine whether the areas were attaining the standard. These areas are still required to correct any deficiencies present in their moderate area SIP's

before the SIP's can be deemed fully approvable and before a request for redesignation to attainment may be approved. The areas should also satisfy all remaining requirements for redesignation to attainment pursuant to section 107(d)(3)(E) prior to the promulgation of the revised NAAQS.

- Five of the initial moderate areas failed to attain by the December 31, 1994 attainment date and did not qualify for attainment extensions. Pursuant to section 188 of the Act, these areas should have been reclassified to serious nonattainment areas for PM-10. The serious area requirements for these areas included the development and submission of a best available control measures/best available control technology (BACM/BACT) and attainment demonstration SIP's showing attainment by December 31, 2001, as well as more stringent NSR requirements. Consistent with the no-backsliding principle, those areas that failed to attain the NAAQS by the December 31, 1994 attainment date and which also did not qualify for attainment date extensions should be reclassified as serious and should proceed with their serious area planning requirements during the interim period.

- Five of the initial 70 moderate areas were reclassified to serious nonattainment areas effective February 8, 1993. These areas were required to develop and submit BACM SIP's by August 8, 1994 and are required to submit attainment demonstrations by February 8, 1997 showing attainment of the PM-10 NAAQS by December 31, 2001. These areas should continue implementing those measures adopted in their BACM SIP's.

For those areas designated moderate nonattainment after the initial designations, SIP submittals which included RACM/RACT and demonstrated attainment by December 31, 2000 were required in 1995. These areas should continue implementing the measures adopted in their SIP's. Those areas which fail to attain the PM-10 NAAQS during the interim period will not be reclassified to serious.

In the event the PM-10 24-hour NAAQS is eliminated, EPA is proposing that PM-10 measures that do not affect fine particle concentrations may be candidates for elimination upon demonstration that removing the measure will not cause the PM-10 annual NAAQS to be violated. The PM-10 measures that affect fine particle concentrations must remain in place until the area can demonstrate that elimination of those measures will not affect the ability to attain and maintain the fine particle NAAQS. The EPA is

also proposing that those nonattainment areas that do not have a fully-approved SIP in place should submit a plan which demonstrates attainment and maintenance of the annual PM-10 standard. No additional PM-10 measures will be required other than those required under the no-backsliding principle during the interim period. The EPA is also proposing that the requirement for retaining or requiring additional PM-10 control measures could be reconsidered if measures resulting in regional reductions are adopted during the interim period. However, EPA would have to approve the regional strategy and the State(s) or entity submitting the strategy must be able to quantitatively demonstrate with available tools that the regional reductions would be beneficial to reducing PM-10 (including coarse fractions if applicable), as well as fine particle concentrations.

f. Substitution of Credits for Emission Reductions

(1) Outside Nonattainment Areas—Ozone

The Subcommittee provided a specific recommendation that a nonattainment area should be allowed to take credit for emissions reductions from sources outside the nonattainment area for the post-1996 and post-1999 3 percent per year ROP requirement so long as the sources are no farther than 100 km (for VOC sources) or 200 km (for NO_x sources) away from the nonattainment area. The EPA believes that this additional flexibility for States in their ROP SIP's is consistent with the Act, since reductions from outside a nonattainment area within these limits contribute to progress toward attainment within the area. The 3 percent per year ROP requirement is a general rate of progress requirement, not a requirement for specific programs or measures such as vehicle inspection and maintenance. Allowing this flexibility would continue to provide the same rate of progress in terms of reducing emissions.

Therefore, EPA is proposing for the interim period that a nonattainment area should be able to take credit for post-1996 and post-1999 ROP emission reductions from sources outside the nonattainment area within the geographic distances from the nonattainment area mentioned above. For States with areas having approved NO_x waivers, EPA is proposing that substitutions of NO_x reductions outside of the nonattainment area for VOC reductions within the attainment area would be allowed if accompanied by a

technical justification at the time of submittal for replacing NO_x reductions with VOC reductions. Substitutions of NO_x for VOC within nonattainment areas with approved waivers will not be allowed.

The EPA is proposing, however, that the locality-based credit for substitutions be restricted to the post-1996 and post-1999 3 percent-per-year requirement. Thus, credit for substitutions to complete or revise the 15 percent ROP requirement for VOC emission reductions in nonattainment areas through 1996 would not be allowed. Further, States would not be able to substitute for specific control measures such as inspection/maintenance (I/M) or reasonably achievable control technology (RACT) that are required in an area by the Act. In these cases, the measures are either: (1) Specific, required measures for which EPA does not believe it appropriate to allow substitution since that could jeopardize the amount of reductions from such mandated programs; or (2) measures that are or should have been in place prior to promulgation of new ozone NAAQS. Further, States would not be able to credit toward the 3 percent-per-year requirement reductions from outside the nonattainment area attributable to other programs prescribed by the Act when implemented outside nonattainment areas. An example is credit for maximum achievable control technology standards controlling hazardous air pollutants or the title IV of the Act NO_x requirements. (These are merely two illustrative examples of such programs, not an inclusive list of all such programs.) Further, the EPA is proposing that all existing control measures that are in place remain in place. The EPA believes that substitutions should be restricted to intrastate areas unless two or more States involved reach agreement. Similarly, application of credits from substitutions should be limited to only one nonattainment area unless two or more States involved reach agreement on dividing the credit between them such that the same emission reductions are not credited toward the progress requirements for more than one area. Interstate substitutions, like intrastate substitutions, must be enforceable by the States in which the affected sources are located.

Credit toward the 3 percent-per-year requirement for regional measures described above to reduce transport and support attainment planning would be allowed if implemented in nonattainment areas. Such credit would also be allowed if implemented outside

the nonattainment area but within the 100 and 200 km geographic limits to the extent the reductions generating the credits are not otherwise due to a prescribed requirement of the Act.

Emissions from the source or sources being substituted must be included in the baseline ROP emissions. The other emissions from source(s) outside the nonattainment area not involved in the substitution would not have to be inventoried nor included in the SIP or the baseline ROP emissions for purposes of the substitution. The EPA is proposing that this provision is only in effect during the interim transition period, and that the final implementation strategy will address the principles applicable to substitutions in attainment demonstrations for implementation of a new NAAQS.

(2) PM-10

The Notice of Proposed Rulemaking for the PM NAAQS lays out a rationale for why PM-10 and fine particles should be treated as two separate pollutants. In addition, the PM-10 standard (which will primarily address coarse particle control) targets localized nonattainment problems while the fine particle standard will address the fine particle fraction including secondarily-formed particles and will focus on the regional aspects and transport of fine particles. Given the physical and chemical differences in PM-10 and fine particles and the uncertainties about the localized and regional aspects of PM-10 and fine particles at this time, EPA is proposing that substitutions for PM in and outside of the nonattainment area should not be allowed during the interim period.

g. Ozone Transport Region (OTR), Ozone Transport Commission (OTC), and the Photochemical Assessment Monitoring System (PAMS)

The OTR and the OTC and related regional control measures, as defined in the Act, continue after promulgation of a new or revised ozone NAAQS. The OTC is currently in the process of evaluating the specific control requirements applicable to the OTR and expects to develop and submit to EPA for consideration an interim implementation program regarding those requirements. In the event such a submission is made to EPA, EPA will evaluate the recommendations and consider whether to modify the portion of this proposed interim implementation policy that addresses the OTR regional control measures.

The PAMS is also carried forward upon promulgation of new or revised ozone NAAQS.

h. Conformity

In general, existing part D SIP's will remain in force, and as a result, motor vehicle emissions budgets and relevant requirements in existing part D SIP's will continue to apply for transportation and general conformity purposes until they are superseded by new or revised part D SIP's.

Conformity determinations will not be required to address the new NAAQS until SIP's addressing the new NAAQS are approved by EPA. Conformity will not apply for fine particles or the new 8-hour ozone NAAQS until SIP's are approved by EPA. The EPA believes this is appropriate because section 176(c) of the Act requires conformity to an implementation plan that has been approved or promulgated under section 110 and refers to conformity to an implementation plan's purpose of reducing violations and attaining the NAAQS; without a SIP addressing the NAAQS there is nothing to which to conform. Although the 1990 Amendments outlined interim conformity tests that EPA required before SIP's were submitted, these Act provisions clearly did not envision the case of new NAAQS, and the emission reduction requirements only applied to ozone and carbon monoxide areas designated under the then existing NAAQS. The test applied to these areas was to contribute to annual emission reductions consistent with the requirements of sections 182 and 187; provisions which do not apply to areas in nonattainment for fine particles or the new 8-hour ozone NAAQS. In addition, as a policy matter, it is not reasonable to establish demonstration of reduction in fine particle emission reductions as a criterion for determining conformity before the SIP process has identified an emissions inventory that could serve as a baseline.

Areas that have not submitted ROP plans or attainment demonstrations for the old standard would be required to conform to the 15 percent plan until a ROP plan or new attainment demonstration is submitted. Some areas that are nonattainment under the existing NAAQS but are attaining the new NAAQS will be permitted to defer implementation of the ROP plan as described above. In such cases, conformity to the ROP plan would not be required, and these areas would demonstrate conformity to the 15 percent plan. Areas that were not required to submit a part D SIP or a 15 percent ROP plan by virtue of their

classification (previous marginal areas) and have not been demonstrating conformity to motor vehicle emissions budgets would be required to continue demonstrating conformity using the emission reduction tests until SIP's with motor vehicle emissions budgets are submitted. Areas that have approved redesignation maintenance plans should continue demonstrating conformity using the motor vehicle emissions budgets and relevant requirements for general conformity in the maintenance plans.

States are free to establish, through the SIP process, a motor vehicle emissions budget that addresses the new or revised NAAQS in advance of a complete SIP attainment demonstration. That is, a State could submit a motor vehicle emissions budget that does not demonstrate attainment but is consistent with projections and commitments to control measures and achieves some progress toward attainment. Such a budget would apply for conformity purposes in addition to existing budgets addressing the old NAAQS (i.e., a SIP that does not demonstrate attainment of the new NAAQS would not supersede existing part D SIP's).

Conformity requirements that are based on the classification system for the former NAAQS, such as the modeling procedures and the requirements for contents of transportation plans, continue to apply after the new or revised NAAQS are promulgated until new SIP's are approved.

i. New Source Review

In accordance with the current NSR requirements, proposed new and modified stationary sources of air pollution must undergo a pollutant-specific preconstruction review and obtain authority to construct prior to beginning their construction activities. A primary purpose of the NSR requirements is the protection of the NAAQS, including those for ozone and PM. The applicable NSR requirements generally are based on the attainment status of the area where the proposed source will locate for each pollutant for which NAAQS exist and which the source will emit.

In areas designated as attainment or unclassifiable, proposed new or modified major stationary sources must be reviewed under the requirements for prevention of significant deterioration (PSD) of air quality pursuant to section 165 of part C of title I of the Act.¹ The

PSD requirements include: (1) A demonstration that the proposed emissions increase will not cause or contribute to a violation of any NAAQS or applicable PSD increment; (2) a determination, where applicable, that the proposed emissions increase from the source will not have an adverse impact on an air quality related value in a Class I area; and (3) compliance with best available control technology.

In nonattainment areas and ozone transport regions, new and modified major sources having the potential to emit major amounts of the nonattainment pollutant must meet the applicable NSR requirements contained in part D of title I of the Act.² The primary NSR requirements for nonattainment areas, contained in section 173 of subpart 1 of part D, require new or modified major stationary sources of any nonattainment pollutant to meet the following requirements: (1) Obtain offsetting emissions reductions (offsets) from existing sources; (2) comply with the lowest achievable emission rate; (3) demonstrate that all major stationary sources owned or operated by the permit applicant are in compliance with all applicable emission limitations and standards under the Act; and (4) submit an analysis of alternative sites, sizes, production processes, and control techniques demonstrating that the benefits of the proposed source outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Additional NSR requirements specifically for ozone and PM nonattainment areas are contained in subparts 2 and 4 of part D, respectively. These subparts set forth criteria for establishing area classifications and various NSR requirements based on those classifications. Subpart 2 (Additional Provisions for Ozone Nonattainment Areas) contains, among other things, provisions for emissions offset ratios, major source thresholds, and source modification requirements for major sources of VOC. Subpart 2 also contains provisions concerning the

treatment of NO_x as an ozone precursor in certain ozone nonattainment areas and ozone transport regions. Subpart 4 (Additional Provisions for PM Nonattainment Areas) contains, among other things, NSR requirements for PM-10, including a 70 tons per year (tpy) major source threshold for PM-10 sources in serious nonattainment areas, and the applicability of PM-10 NSR control requirements to major stationary sources of PM-10 precursors.

As described earlier in this document, the detailed provisions of subparts 2 and 4 of part D of title I of the Act that currently apply to existing ozone and PM-10 nonattainment areas would not apply directly to the implementation of the proposed new or revised ozone NAAQS or the proposed annual and 24-hour fine particle NAAQS, which EPA is proposing elsewhere in today's Federal Register. However, as part of EPA's proposed interim policy for transitioning from the current program to implementation of potential new or revised ozone and PM NAAQS, EPA is proposing to continue the implementation of the existing NSR requirements with respect to ozone and PM under a policy of no backsliding. In the case of ozone, this proposed position is further supported by the fact that EPA is also proposing to defer the effective date of the revocation of the existing 1-hour ozone NAAQS until such time that EPA determines that an area has a SIP which provides for achievement of the new NAAQS. This proposed interim implementation policy discussed in more detail below, does not address potential new PSD increments for any new or revised NAAQS because the Act provides EPA with an additional 2 years from the date of NAAQS promulgation to address such issues.

Numerous issues will need to be resolved as part of the development of the final integrated implementation program to address new or revised NAAQS for ozone and PM and a regional haze program (see ANPR for Implementation of New or Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations published elsewhere in today's Federal Register. Some of these issues, particularly as they relate to fine particles, directly affect the implementation of the NSR requirements. Of particular concern is the lack of necessary analytical and technical tools and guidance governing the preconstruction review of new and modified stationary sources associated with fine particles. For example, the use of dispersion models to predict air

²The EPA's nonattainment NSR requirements are codified at 40 CFR 51.165(a). These existing regulations do not currently include the various changes enacted by Congress under the Clean Air Act Amendments of 1990. The EPA issued policy memos to describe how certain statutory NSR provisions would apply while EPA's regulations and State NSR programs were being revised to reflect the 1990 Amendments (March 11, 1991 and September 3, 1992 memoranda from John S. Seitz, Director, OAQPS). To meet statutory deadlines, most States have already completed the necessary update of their NSR programs. The EPA proposed to amend its NSR regulations on July 23, 1996 as part of the NSR reform rulemaking (61 FR 38250-38344).

¹The EPA has adopted PSD regulations pursuant to part C at 40 CFR 51.166 (minimum requirements for submittal and approval of a State PSD program) and 40 CFR 52.21 (the Federal PSD program).

quality impacts of new and modified sources is at the heart of the required NAAQS compliance demonstration under the PSD program. Air quality dispersion modeling for ambient fine particle concentrations is in its infancy.

Another problem is that little information exists in emissions inventories regarding PM size distribution and corresponding settling velocities. Emissions factors for estimating the amount of fine particles from new and modified sources are generally not available and may take considerable time to develop and validate. The ability to predict the amounts of fine particle emissions is complicated by the emissions contribution made by precursors, including sulfates, nitrates, and VOC.

In addition, ambient fine particle concentrations in many areas experience a significant contribution from secondary fine particle transformation and transport. The EPA is currently in the process of developing a comprehensive modeling system which will account for secondary fine particle formation and will also eventually incorporate a method for nesting small local impacts from individual point sources within a greater modeling domain. The ultimate success of this system hinges upon the collection of sufficient monitoring data to verify protocol modeling results.

Finally, while ambient monitoring methods for measuring fine particles are to be proposed commensurate with the proposal of any new NAAQS for PM, sufficient monitors are not expected to be available immediately after promulgation of any new or revised NAAQS to satisfy the requirement that new and modified sources collect ambient fine particle data needed for individual PSD air quality analyses.

Consequently, in the absence of the necessary analytical and technical tools, as well as a final implementation strategy for fine particles, source owners and operators would have difficulty predicting amounts of fine particles being emitted from their own proposed source and from existing sources, and also would be unable to carry out a comprehensive air quality analysis for fine particle emissions.³ The EPA

believes that without the appropriate implementation tools and policy, such new preconstruction review responsibilities clearly would place an unreasonable burden on sources, as well as the permitting authorities, in terms of their ability to satisfy the NSR requirements.

The proposed interim policy for NSR will apply the principle of no backsliding, as described earlier in this document, to provide interim protection of any new or revised NAAQS after promulgation until EPA amends its existing NSR requirements and approves SIP's based on those amendments. The description of the proposed interim implementation policy for NSR is divided into a general discussion of geographic applicability for NSR, and separate discussions of how the existing NSR requirements will be implemented for ozone and PM.

Interim Implementation Policy for Geographic Applicability of the Existing NSR Requirements. The NSR requirements generally apply to new or modified major stationary sources with respect to any particular pollutant based on the attainment status of the area (relative to each affected pollutant) in which a new or modified source will locate. As described earlier in this document, EPA is proposing that the existing PM-10 area designations and classifications remain in effect until new designations are undertaken after promulgation of the new or revised NAAQS and that the ozone designations and classifications remain in effect for so long as the current 1-hour ozone NAAQS remains in effect. Thus, for the interim period following promulgation of any new or revised NAAQS for ozone and PM, EPA is also proposing that the existing NSR requirements continue to apply to sources of VOC (and NO_x, where applicable) and PM-10 (and PM-10 precursors, where applicable) on the basis of the attainment, unclassifiable, and nonattainment area designations and classifications that exist at the time of promulgation of any new or revised NAAQS for ozone and PM, respectively, except for those possible circumstances where a redesignation based on an existing ozone or PM NAAQS is approved by EPA subsequent to the promulgation of new or revised NAAQS. In such cases, EPA is proposing that once such redesignation is in effect, the area's attainment status based on the EPA-approved redesignation will determine the

concentration, grandfathering provisions and special monitoring provisions to enable applicants to determine the applicability of any proposed PM-10 emissions to the preconstruction review requirements.

applicability of the NSR requirements for the affected pollutant during the interim period.

Interim Implementation Policy for Ozone NSR. During the interim period following promulgation of any new or revised NAAQS for ozone, EPA is proposing that permit applications for new and modified major sources of VOC (or NO_x, as applicable) which locate in an area designated as nonattainment for the 1-hour ozone NAAQS, or in an ozone transport region, must continue to satisfy the applicable nonattainment NSR requirements under part D of title I of the Act. The specific criteria which must be satisfied are to be based on the classification of the particular ozone nonattainment area or ozone transport region, except that for marginal and moderate nonattainment areas which do not attain the existing 1-hour ozone NAAQS by November 15, 1996 and are not attaining the new ozone NAAQS, EPA is proposing that the applicable NSR requirements for VOC and NO_x be determined by all of the statutory NSR requirements for the next higher classification. That is, in ozone nonattainment areas classified as marginal that failed to attain, the major source threshold would remain unchanged at 100 tpy of VOC or NO_x, but the interim offset ratio would be at least 1.15:1 (the offset ratio for moderate areas); and in moderate areas that fail to attain, the major source threshold would be lowered to 50 tpy of VOC or NO_x (the threshold for serious areas), and the interim offset ratio would be at least 1.2:1 (the offset ratio for serious areas). Section 182(b) (6)–(8) of subpart 2 of part D also contains special requirements for modifications to existing sources in serious (and severe) ozone nonattainment areas which would also apply to moderate nonattainment areas that do not attain by November 15, 1996 and are not attaining the new ozone NAAQS. These requirements include a new de minimis test involving a significance threshold based on aggregated emission increases of greater than 25 tpy of VOC or NO_x for proposed modifications; requirements and optional procedures for major modifications which emit, or have the potential to emit, less than 100 tpy or VOC or NO_x; and requirements and optional procedures for major modifications which emit, or have the potential to emit, 100 tpy or more of VOC or NO_x. Under a separate rulemaking, EPA has proposed its

³When EPA promulgated the NAAQS for PM-10, EPA also adopted, as necessary, amendments to the PSD regulations to establish new requirements applicable to that newly-regulated form of PM. Based on such new requirements, each PSD application subject to EPA's part 52 PSD regulations, and not eligible to be grandfathered, was required to address significant emissions increases of PM-10 as of the effective date of the revised NAAQS for PM (52 FR 24672, July 1, 1987). The EPA adopted, for purposes of PM-10, a new significant emissions rate, significant monitoring

interpretation of these complex provisions.⁴

The NSR requirements under part D provide that emissions offsets may be acquired from existing sources either within the affected ozone nonattainment area or from another ozone nonattainment area with an equal or higher classification than the affected nonattainment area. In addition, when offsets from another nonattainment area (of equal or higher classification) are proposed, it must be shown that emissions from such nonattainment area contribute to a violation in the affected nonattainment area. The EPA is proposing that for purposes of the interim implementation policy, the term "equal or higher classification" is to be based on the actual classifications of the affected ozone nonattainment areas. For example, if the nonattainment area where a new source proposes to locate is a moderate nonattainment area that failed to attain by November 15, 1996 and, therefore, continues to be treated as a moderate area although the NSR requirements for serious areas apply under the interim policy, the offsets may still be obtained under section 173(c) of the Act from other ozone nonattainment areas classified as moderate or higher.

For areas designated as attainment or unclassifiable for the existing 1-hour ozone NAAQS, EPA is proposing that permit applications for major new and modified sources which would have a significant increase in VOC emissions, must satisfy the applicable existing PSD requirements. These requirements include compliance with the best available control technology and the completion of the required air quality

analysis. In addition, there are no PSD increments for ozone.

Interim Implementation Policy for PM NSR. The EPA is also proposing, as part of its interim implementation policy for NSR, that the preconstruction review for PM will continue to involve only the review of PM-10 emissions and their ambient impacts, while deferring a specific review of potential fine particle emissions and their ambient impacts. This policy would provide that the review of fine particle emissions, including the applicant's demonstration of compliance with the fine particle NAAQS, will not be required until EPA promulgates amendments to the existing NSR requirements concerning any newly-regulated form of PM under the integrated implementation program and SIP's are revised accordingly and approved by EPA. The EPA cannot reasonably amend its own regulations until it is technically able to predict and measure emissions of fine particles generated by individual sources and better understand and estimate the formation and dispersion of ambient fine particle concentrations in the atmosphere.

For proposed new or modified sources of PM locating in areas designated as nonattainment for PM-10, EPA is proposing that during the interim period following promulgation of any new or revised PM NAAQS, permit applicants must continue to satisfy the applicable State or local nonattainment NSR requirements for PM-10 consistent with part D (subparts 1 and 4) of title I of the Act. The part D nonattainment NSR requirements apply to major new sources of PM-10 and modifications to existing major sources of PM-10 that would have a significant net emissions increase of PM-10, i.e., 15 tpy or more. The applicable major source threshold will continue to be based on the PM-10 level

defined by the classification of the affected PM-10 nonattainment area. That is, if the nonattainment area is not classified as serious, a 100 tpy PM-10 emissions threshold will apply. For serious PM-10 nonattainment areas, a 70 tpy major source threshold will apply.

For areas designated as attainment or unclassifiable for the existing PM-10 NAAQS, permit applications for major new or modified stationary sources with the potential to emit significant amounts of PM-10 emissions (i.e., 15 tpy or more) must also continue to satisfy the applicable PSD requirements for PM-10. The specific requirements for PM include a demonstration that the source will: (1) Not cause or contribute to a violation of the annual or 24-hour PM-10 NAAQS, (2) not cause or contribute to a violation of the annual or 24-hour PM-10 increments, (3) not have an adverse impact on any air quality-related value associated with ambient PM-10 concentrations in a Class I area, and (4) apply best available control technology for PM-10 emissions.

The EPA intends the same interim implementation policy as described above for PM to apply—whether or not EPA decides to delete the 24-hour PM-10 NAAQS as an alternative to the proposed revision of the existing 24-hour PM-10 NAAQS. This is based on the need to continue to review and control PM-10 emissions and their ambient impacts as a surrogate for addressing the proposed 24-hour fine particle NAAQS during the interim period.

Dated: November 27, 1996.

Carol M. Browner,
Administrator.

[FR Doc. 96-30898 Filed 12-12-96; 8:45 am]

BILLING CODE 6560-50-P

⁴The EPA proposed its interpretation of the requirements contained in section 182(c) (6), (7), and (8) of subpart 2 of part D in the July 23, 1996 NSR reform proposed rulemaking (61 FR 38250, 38297-38302).