(2) Transport of ozone and/or precursors into the area is so overwhelming that the contribution of local emissions to observed 8-hour ozone concentration above the level of the NAAQS is relatively minor; and

(3) The Administrator finds that sources of VOC (and, where the Administrator determines relevant, NO_X) emissions within the area do not make a significant contribution to the ozone concentrations measured in other areas.

(b) *Attainment dates.* For an area subject to § 51.902(b), the Administrator will approve an attainment date consistent with the attainment date timing provision of section 172(a)(2)(A) of the CAA at the time the Administrator approves an attainment demonstration for the area.

§ 51.905 How do areas transition from the 1-hour NAAQS to the 8-hour NAAQS and what are the anti-backsliding provisions?

(a) *What requirements that applied in an area for the 1-hour NAAQS continue to apply after revocation of the 1-hour NAAQS for that area?*—(1) *8-Hour NAAQS Nonattainment/1-Hour NAAQS Nonattainment.* The following requirements apply to an area designated nonattainment for the 8-hour NAAQS and designated nonattainment for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS for that area.

(i) The area remains subject to the obligation to adopt and implement the applicable requirements as defined in § 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) of this section.

(ii) If the area has not met its obligation to have a fully-approved attainment demonstration SIP for the 1-hour NAAQS, the State must comply with one of the following:

(A) Submit a 1-hour attainment demonstration no later than 1 year after designation;

(B) Submit a RFP plan for the 8-hour NAAQS no later than 1-year following designations for the 8-hour NAAQS providing a 5 percent increment of emissions reduction from the area's 2002 emissions baseline, which must be in addition to measures (or enforceable commitments to measures) in the SIP at the time of the effective date of designation and in addition to national or regional measures and must be achieved no later than 2 years after the required date for submission (3 years after designation).

(C) Submit an 8-hour ozone attainment demonstration no later than 1 year following designations that demonstrates attainment of the 8-hour NAAQS by the area's attainment date; provides for 8-hour RFP for the area out to the attainment date; and for the initial period of RFP for the area (between 2003–2008), achieve the emission reductions by December 31, 2007.

(iii) If the area has an outstanding obligation for an approved 1-hour ROP SIP, it must develop and submit to EPA all outstanding 1-hour ROP plans; where a 1-hour obligation overlaps with an 8-hour RFP requirement, the State's 8-hour RFP plan can be used to satisfy the 1-hour ROP obligation if the 8-hour RFP plan has an emission target at least as stringent as the 1-hour ROP emission target in each of the 1-hour ROP target years for which the 1-hour ROP obligation exists.

(2) *8–Hour NAAQS Nonattainment/1–Hour NAAQS Maintenance.* An area designated nonattainment for the 8-hour NAAQS that is a maintenance area for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS for that area remains subject to the obligation to implement the applicable requirements as defined in § 51.900 (f) to the extent such obligations are required by the approved SIP, except as provided in paragraph (b) of this section. Applicable measures in the SIP must continue to be implemented; however, if these measures were shifted to contingency measures prior to designation for the 8-hour NAAQS for the area, they may remain as contingency measures, unless the measures are required to be implemented by the CAA by virtue of the area's requirements under the 8-hour NAAQS. The State may not remove such measures from the SIP.

(3) *8–Hour NAAQS Attainment/1–Hour NAAQS Nonattainment*—(i) *Obligations in an approved SIP.* For an area that is 8-hour NAAQS attainment/1-hour NAAQS nonattainment, the State may

request that obligations under the applicable requirements of § 51.900(f) be shifted to contingency measures, consistent with sections 110(l) and 193 of the CAA, after revocation of the 1-hour NAAQS; however, the State cannot remove the obligations from the SIP. For such areas, the State may request that the nonattainment NSR provisions be removed from the SIP on or after the date of revocation of the 1-hour NAAQS and need not be shifted to contingency measures subject to paragraph (e)(4) of this section.

(ii) *Attainment demonstration and ROP plans.* (A) To the extent an 8-hour NAAQS attainment/1-hour NAAQS nonattainment area does not have an approved attainment demonstration or ROP plan that was required for the 1-hour NAAQS under the CAA, the obligation to submit such an attainment demonstration or ROP plan

(*1*) Is deferred for so long as the area continues to maintain the 8-hour NAAQS; and

(*2*) No longer applies once the area has an approved maintenance plan pursuant to paragraph (a)(3)(iii) of this section.

(B) For an 8-hour NAAQS attainment/1-hour NAAQS nonattainment area that violates the 8-hour NAAQS, prior to having an approved maintenance plan for the 8-hour NAAQS as provided under paragraph (a)(3)(iii) of this section, paragraphs (a)(3)(ii)(B)(*1*), (*2*), and (*3*) of this section shall apply.

(*1*) In lieu of any outstanding obligation to submit an attainment demonstration, within 1 year after the date on which EPA publishes a determination that a violation of the 8-hour NAAQS has occurred, the State must submit (or revise a submitted) maintenance plan for the 8-hour NAAQS, as provided under paragraph (a)(3)(iii) of this section, to—

(*i*) Address the violation by relying on modeling that meets EPA guidance for purposes of demonstrating maintenance of the NAAQS; or

(*ii*) Submit a SIP providing for a 3 percent increment of emissions reductions from the area's 2002 emissions baseline; these reductions must be in addition to measures (or enforceable commitments to measures) in the SIP at the time of the effective date of designation and in addition to national or regional measures.

(*2*) The plan required under paragraph (a)(3)(ii)(B)(*1*) of this section must provide for the emission reductions required within 3 years after the date on which EPA publishes a determination that a violation of the 8-hour NAAQS has occurred.

(*3*) The State shall submit an ROP plan to achieve any outstanding ROP reductions that were required for the area for the 1-hour NAAQS, and the 3-year period or periods for achieving the ROP reductions will begin January 1 of the year following the 3-year period on which EPA bases its determination that a violation of the 8-hour NAAQS occurred.

(iii) *Maintenance plans for the 8-hour NAAQS.* For areas initially designated attainment for the 8-hour NAAQS, and designated nonattainment for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS, the State shall submit no later than 3 years after the area's designation for the 8-hour NAAQS, a maintenance plan for the 8-hour NAAQS in accordance with section 110(a)(1) of the CAA. The maintenance plan must provide for continued maintenance of the 8-hour NAAQS for 10 years following designation and must include contingency measures. This provision does not apply to areas redesignated from nonattainment to attainment for the 8-hour NAAQS pursuant to CAA section 107(d)(3); such areas are subject to the maintenance plan requirement in section 175A of the CAA.

(4) *8-Hour NAAQS Attainment/1–Hour NAAQS Maintenance*—(i) *Obligations in an approved SIP.* For an 8-hour NAAQS attainment/1-hour NAAQS maintenance area, the State may request that obligations under the applicable requirements of § 51.900(f) be shifted to contingency measures, consistent with sections 110(l) and 193 of the CAA, after revocation of the 1-hour NAAQS; however, the State cannot remove the obligations from the SIP.

(ii) *Maintenance Plans for the 8-hour NAAQS.* For areas initially designated attainment for the 8-hour NAAQS and subject to the maintenance plan for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS, the State

shall submit no later than 3 years after the area's designation for the 8-hour NAAQS, a maintenance plan for the 8-hour NAAQS in accordance with section 110(a)(1) of the CAA. The maintenance plan must provide for continued maintenance of the 8-hour NAAQS for 10 years following designation and must include contingency measures. This provision does not apply to areas redesignated from nonattainment to attainment for the 8-hour NAAQS pursuant to section 107(d)(3); such areas are subject to the maintenance plan requirement in section 175A of the CAA.

(b) *Does attainment of the ozone NAAQS affect the obligations under paragraph (a) of this section?* A State remains subject to the obligations under paragraphs (a)(1)(i) and (a)(2) of this section until the area attains the 8-hour NAAQS. After the area attains the 8-hour NAAQS, the State may request such obligations be shifted to contingency measures, consistent with sections 110(l) and 193 of the CAA; however, the State cannot remove the obligations from the SIP.

(c) *Which portions of an area designated for the 8-hour NAAQS remain subject to the obligations identified in paragraph (a) of this section?* (1) Except as provided in paragraph (c)(2) of this section, only the portion of the designated area for the 8-hour NAAQS that was required to adopt the applicable requirements in § 51.900(f) for purposes of the 1-hour NAAQS is subject to the obligations identified in paragraph (a) of this section, including the requirement to submit a maintenance plan for purposes of paragraph (a)(3)(iii) of this section. 40 CFR part 81, subpart C identifies the boundaries of areas and the area designations and classifications for the 1-hour NAAQS in place as of the effective date of designation for the 8-hour NAAQS.

(2) For purposes of paragraph (a)(1)(ii)(B) and (C) of this section, the requirement to achieve emission reductions applies to the entire area designated nonattainment for the 8-hour ozone NAAQS.

(d) [Reserved]

(e) *What obligations that applied for the 1-hour NAAQS will no longer apply after revocation of the 1-hour NAAQS for an area?*—(1) *Maintenance plans.* Upon revocation of the 1-hour NAAQS, an area with an approved 1-hour maintenance plan under section 175A of the CAA may modify the maintenance plan: To remove the obligation to submit a maintenance plan for the 1-hour NAAQS 8 years after approval of the initial 1-hour maintenance plan; and to remove the obligation to implement contingency measures upon a violation of the 1-hour NAAQS. However, such requirements will remain enforceable as part of the approved SIP until such time as EPA approves a SIP revision removing such obligations. The EPA shall not approve a SIP revision requesting these modifications until the State submits and EPA approves an attainment demonstration for the 8-hour NAAQS for an area initially designated nonattainment for the 8-hour ozone NAAQS or a maintenance SIP for the 8-hour NAAQS for an area initially designated attainment for the 8-hour NAAQS. Any revision to such SIP must meet the requirements of section 110(l) and 193 of the CAA.

(2) *Findings of failure to attain the 1-hour NAAQS.* (i) Upon revocation of the 1-hour NAAQS for an area, EPA is no longer obligated—

(A) To determine pursuant to section 181(b)(2) or section 179(c) of the CAA whether an area attained the 1-hour NAAQS by that area's attainment date for the 1-hour NAAQS; or

(B) To reclassify an area to a higher classification for the 1-hour NAAQS based upon a determination that the area failed to attain the 1-hour NAAQS by the area's attainment date for the 1-hour NAAQS.

(ii) Upon revocation of the 1-hour NAAQS for an area, the State is no longer required to include in its SIP provisions for CAA section 181(b)(4) and 185 fees on emissions sources in areas classified as severe or extreme based on a failure to meet the 1-hour attainment date. Upon revocation of the 1-hour NAAQS in an area, the State may remove from the SIP for the area the provisions for complying with the section 185 fee provision as it applies to the 1-hour NAAQS.

(iii) Upon revocation of the 1-hour NAAQS for an area, the State is no longer required to include in its SIP

contingency measures under CAA sections 172(c)(9) and 182(c)(9) that would be triggered based on a failure to attain the 1-hour NAAQS or to make reasonable further progress toward attainment of the 1-hour NAAQS. A State may not remove from the SIP a contingency measure that is an applicable requirement.

(3) *Conformity determinations for the 1-hour NAAQS.* Upon revocation of the 1-hour NAAQS for an area, conformity determinations pursuant to section 176(c) of the CAA are no longer required for the 1-hour NAAQS. At that time, any provisions of applicable SIPs that require conformity determinations in such areas for the 1-hour NAAQS will no longer be enforceable pursuant to section 176(c)(5) of the CAA.

(4) *Nonattainment area new source review under the 1-hour NAAQS.* (i) Upon revocation of the 1-hour ozone NAAQS, for any area that was designated nonattainment for the 1-hour ozone NAAQS, the area's implementation plan provisions satisfying sections 172(c)(5) and 173 of the CAA (including provisions satisfying section 182) based on the area's previous 1-hour ozone NAAQS classification are no longer required elements of an approvable implementation plan. Instead, the area's implementation plan must meet the requirements contained in paragraphs (e)(4)(ii) through (e)(4)(iv) of this section.

(ii) If the area is designated nonattainment for the 8-hour ozone NAAQS, the implementation plan must include requirements to implement the provisions of sections 172(c)(5) and 173 of the CAA based on the area's 8-hour ozone NAAQS classification under part 81 of this chapter, and the provisions of § 51.165.

(iii) If the area is designated attainment or unclassifiable for the 8-hour ozone NAAQS, the area's implementation plan must include provisions to implement the provisions of section 165 of the CAA, and the provisions of § 51.166 of this part, unless the provisions of § 52.21 of this chapter apply in such area.

(iv) If the area is designated attainment or unclassifiable but is located in an Ozone Transport Region, the area's implementation plan must include provisions to implement, consistent with the requirements in section 184 of the CAA, the requirements of sections 172(c) and 173 of the CAA as if the area is classified as moderate nonattainment for the 8-hour ozone NAAQS.

(f) *What is the continued applicability of the* NO_X SIP Call after revocation of the 1-hour NAAQS? The NO_X SIP Call shall continue to apply after revocation of the 1-hour NAAQS. Control obligations approved into the SIP pursuant to 40 CFR 51.121 and 51.122 may be modified by the State only if the requirements of §§ 51.121 and 51.122, including the statewide NO_X emission budgets, continue to be met and the State makes a showing consistent with section 110(l) of the CAA.

[69 FR 23996, Apr. 30, 2004, as amended at 70 FR 30604, May 26, 2005; 70 FR 44474, Aug. 3, 2005]

§ 51.906 Redesignation to nonattainment following initial designations for the 8-hour NAAQS.

For any area that is initially designated attainment or unclassifiable for the 8-hour NAAQS and that is subsequently redesignated to nonattainment for the 8-hour ozone NAAQS, any absolute, fixed date applicable in connection with the requirements of this part is extended by a period of time equal to the length of time between the effective date of the initial designation for the 8-hour NAAQS and the effective date of redesignation, except as otherwise provided in this subpart.

[70 FR 71700, Nov. 29, 2005]

§ 51.907 For an area that fails to attain the 8-hour NAAQS by its attainment date, how does EPA interpret sections 172(a)(2)(C)(ii) and 181(a)(5)(B) of the CAA?

For purposes of applying sections 172(a)(2)(C) and 181(a)(5) of the CAA, an area will meet the requirement of section 172(a)(2)(C)(ii) or 181(a)(5)(B) of the CAA pertaining to 1-year extensions of the attainment date if:

(a) For the first 1-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 ppm or less.

(b) For the second 1-year extension, the area's 4th highest daily 8-hour