

have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides a finding that California has not met that requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particular matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 18, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02-24912 Filed 10-1-02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FRL-7387-5]

Approval and Promulgation of Implementation Plans; Louisiana; Baton Rouge Nonattainment Area; Ozone; 1-Hour Ozone Attainment Demonstration; Attainment Date Extension, and Withdrawal of Nonattainment Determination and Reclassification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act (Act), EPA is approving the Louisiana 1-hour ozone attainment demonstration State Implementation Plan (SIP) for the Baton Rouge serious ozone nonattainment area. In conjunction with its approval of the attainment demonstration, EPA is: approving Louisiana's transport demonstration and extending the ozone attainment date for the Baton Rouge ozone nonattainment area to November 15, 2005, while retaining the area's current classification as a serious ozone nonattainment area; withdrawing EPA's June 24, 2002, rulemaking determining nonattainment and reclassification of the Baton Rouge ozone nonattainment area; finding that the Baton Rouge ozone nonattainment area meets the reasonably available control measures (RACM) requirements of the Act; approving the State's enforceable commitment to perform a mid-course review and submit a SIP revision to EPA by May 1, 2004; approving the motor vehicle emissions budget (MVEB) and an enforceable commitment to submit revised budgets using MOBILE6; and approving an enforceable transportation control measure (TCM).

This action also approves SIP submittals relating to corrections to the 1990 Base Year Emissions Inventory, the 9% Rate-of-Progress Plan (ROPP), and the 15% ROPP.

DATES: This rule is effective October 2, 2002. The amendment to § 81.319 which published on June 24, 2002 (67 FR 42688) and were revised on August 20, 2002 (67 FR 53882) are withdrawn.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following addresses: U.S. Environmental Protection Agency, Region 6, Air Planning Section, 1445 Ross Avenue, Dallas, Texas 75202-2733; Louisiana

Department of Environmental Quality, 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Maria L. Martinez, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-2230.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Background

A notice of proposed rulemaking was published on this action on August 2, 2002 (67 FR 50391). EPA has also published a notice regarding the Baton Rouge area's potential eligibility for an attainment date extension on May 9, 2001 (66 FR 23646). EPA received comments on these proposals. EPA has also published a related notice: the "Extension of Attainment Dates for Downwind Transport Areas," 64 FR 14441 (March 25, 1999). That notice announced EPA's interpretation of the Act regarding the possibility of extending attainment dates for ozone nonattainment areas that had been classified as moderate or serious for the 1-hour ozone standard and which are downwind of areas that have interfered with their ability to demonstrate attainment. In that notice EPA also noted that we intended to finalize our interpretation only when we applied this policy in the context of individual rulemakings addressing specific attainment demonstrations and requests for attainment date extensions. We have received comments on our application of this policy to the Baton Rouge area. Therefore, in this final rule, EPA responds to adverse comments on these proposed rulemakings and notices. For details on the SIP submittals and EPA's analysis of the submittals, refer to the notices of the proposed rules referenced above in this paragraph, and the technical support documents for the August 2, 2002, and May 9, 2001, proposals.

EPA is making this final rulemaking effective immediately. Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. EPA is making this action effective immediately because the effective date of the nonattainment

determination and reclassification (which is being withdrawn as a result of this final rule) is imminent. In addition, EPA finds good cause for making this action effective immediately because, in part, it relieves a restriction that would otherwise go into effect.

Information

This section provides additional information by addressing the following questions:

- I. What Louisiana SIP revisions are the topic of this action?
- II. What previous actions have been taken regarding the Baton Rouge area attainment demonstration and attainment date?
- III. What MVEBs are we approving?
- IV. What revisions concerning the 1990 Base Year Emissions Inventory, the 9% ROPP, and the 15% ROPP are we approving?
- V. Implementation of RACM.
- VI. What are the requirements for full approval of the attainment demonstration?
- VII. Did Louisiana fulfill these requirements for full approval?
- VIII. What are the criteria for an attainment date extension?
- IX. How did Louisiana satisfy the criteria for an attainment date extension?
- X. What action is EPA taking regarding the Determination of Nonattainment as of November 15, 1999, and Reclassification published on June 24, 2002?
- XI. What comments were received on the proposals covered by this final action, and on the March 25, 1999, publication of the attainment date extension policy, and how has EPA responded to those?
- XII. What action is EPA taking regarding the State submittals addressed by this final rule?

I. What Louisiana SIP Revisions Are the Topic of This Action?

The Baton Rouge ozone nonattainment area encompasses the East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Livingston Parishes (40 CFR 81.319). The State of Louisiana made several submittals to us relating to the ozone attainment demonstration and their request for an extension of the attainment date for the Baton Rouge ozone nonattainment area. The submittals listed below relate directly to EPA's final action described in this document:

- (a) On December 31, 2001, LDEQ submitted an ozone attainment demonstration and transport SIP revision. The SIP revision included:
 - i. A revision to the 15% ROPP for the control of Volatile Organic Compounds (VOC) emissions in the Baton Rouge area. The 15% Rate ROPP was approved by EPA on October 22, 1996 (61 FR 54737).
 - ii. Revisions to the 1990 base year emissions inventory. The inventory was approved on July 2, 1999 (64 FR 35930).

- iii. Revisions to the Post-1996 ROPP. The Post-1996 ROPP, also referred to as the 9% ROPP, was approved on July 2, 1999 (64 FR 35930).

- iv. Revisions to the Inspection and Maintenance (I/M) program.

- v. Attainment MVEBs for 2005 for VOCs and Nitrogen Oxides (NO_x).

- vi. An enforceable commitment to submit revised MVEBs within 24 months after the release of MOBILE6.

- vii. An enforceable commitment for mid-course review.

- viii. An enforceable transportation control measure referred to as the Advanced Transportation Management System.

- ix. An emissions control strategy that incorporates federal, state, and local control measures.

- x. Revisions to Louisiana's New Source Review (NSR) rules.

- xi. Substitute contingency measures.

(b) On February 27, 2002, LDEQ submitted final rules for the emission reductions credit banking program.

(c) On February 27, 2002, LDEQ also submitted final revisions to the contingency measures proposed in the December 31, 2002, SIP submittal.

(d) On May 20, 2002, LDEQ submitted a letter concerning the revisions to the rulemaking dealing with VOC emissions from industrial wastewater.

(e) On July 25, 2002, the Governor submitted Louisiana's final rule for the control of emissions of nitrogen oxides. Prior to that, on February 1, 2002, LDEQ had submitted changes to the proposed rule for control of NO_x emissions and on April 8, 2002, LDEQ had submitted a letter requesting parallel processing of revisions to the State's NO_x regulations.

EPA has taken separate final actions on other parts of the Baton Rouge SIP, including the I/M Program, NO_x regulations, NSR, emissions reductions credit banking, and Contingency Measures. EPA also approved SIP revisions dealing with VOC emissions from industrial wastewater which are published at 67 FR 41840 (June 20, 2002). In this final rulemaking the following are considered: The ozone attainment demonstration plan and its associated MVEBs; the transport SIP related materials; the RACM analysis; the revisions to the 1990 base year inventory, the 15% ROPP, and the Post-1996 ROPP, the attainment date extension, and a withdrawal of nonattainment determination and reclassification.

II. What Previous Actions Have Been Taken Regarding the Baton Rouge Area Attainment Demonstration and Attainment Date?

On May 9, 2001 (66 FR 23646), EPA proposed to find that the Baton Rouge ozone nonattainment area had not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the attainment date for serious nonattainment areas (November 15, 1999). Also in that notice, EPA issued a notice of the Baton Rouge area's potential eligibility for an attainment date extension, pursuant to EPA's, "Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas" (hereinafter referred to as the attainment date extension policy) (Richard D. Wilson, Acting Assistant Administrator for Air and Radiation) issued on July 16, 1998. In the May 9, 2001, **Federal Register**, EPA proposed to finalize the reclassification of the Baton Rouge nonattainment area only after the area had an opportunity to qualify for an attainment date extension under the attainment date extension policy.

Subsequent to our May 9, 2001, proposed rulemaking, a relevant court decision was issued which affected EPA's proposed rulemaking for the Baton Rouge area. EPA was in the process of reviewing the Attainment Plan/Transport SIP when the United States District Court for the Middle District of Louisiana entered a Judgment on March 7, 2002, ordering EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. *LEAN v. Whitman*, No. 00-879-A. In compliance with the Court's Order, EPA signed on June 5, 2002, and published in the **Federal Register** on June 24, 2002, (67 FR 42688) our determination that the Baton Rouge area did not attain the 1-hour ozone standard by November 15, 1999 in the **Federal Register** (67 FR 42688). By operation of law, that determination would result in the Baton Rouge area being reclassified from a serious to a severe nonattainment area on the effective date of that rule. EPA concurrently proposed to extend the effective date of our determination from August 23, 2002, to October 4, 2002 (67 FR 42697, June 24, 2002). On August 20, 2002, we published an action finalizing the modification of the effective date of our June 24, 2002, final reclassification from August 23, 2002, until October 4, 2002.

In the June 24, 2002, proposed rulemaking, EPA also set forth its intent to withdraw the final determination and reclassification, if EPA granted the State an attainment date extension before the

effective date of the determination and reclassification rule.

On August 2, 2002 (67 FR 50391), EPA proposed to approve Louisiana's 1-hour ozone attainment demonstration SIP for the Baton Rouge ozone nonattainment area. Also, in that notice we proposed to approve an extension of the ozone attainment date for the Baton Rouge area to November 15, 2005, while retaining the area's classification as a serious ozone nonattainment area if EPA took final action to approve the State's ozone attainment demonstrations. EPA also proposed other related actions in the August 2, 2002, proposal.

Additionally, EPA has taken separate actions on other related revisions to the Baton Rouge SIP, including the I/M Program (proposed at 67 FR 44410, July 2, 2002), NO_x regulations (proposed at 67 FR 30638, May 7, 2002, and 67 FR 48095, July 23, 2002), NSR (proposed at 67 FR 48090, July 23, 2002), emissions reductions credit banking (proposed at 67 FR 48083, July 23, 2002), Contingency Measures (proposed at 67 FR 35468, May 20, 2002), and SIP revisions dealing with VOC emissions from industrial wastewater (67 FR 41840, June 20, 2002). Please see the related final actions which published in the **Federal Register** on September 26, September 27, and September 30, 2002.

EPA has received comments on portions of our May 9, 2001; June 24, 2002; and August 2, 2002, proposed rules. The Tulane Environmental Law Clinic and the Louisiana Environmental Action Network (LEAN) submitted adverse comments on portions of the May 9, 2001; June 24, 2002; and August 2, 2002, proposed rules. Earthjustice submitted adverse comments on portions of the August 2, 2002, proposed rule. Louisiana Generating, LLC and Big Cajun I and II (LAGen), submitted adverse comments on Section 4.2.1 of the SIP in response to our August 2, 2002, proposed approval. All other comments on the proposals supported EPA's proposed actions. In this final rule, EPA responds to the adverse comments received in response to the relevant proposals. EPA also responds to relevant adverse comments on its March 25, 1999, notice of interpretation regarding the attainment date extension policy (64 FR 14441).

III. What MVEBs Are We Approving?

On December 31, 2001, Louisiana submitted motor vehicle emissions budgets for the 2005 attainment year for the Baton Rouge area in their SIP. The attainment year MVEBs established by this plan that we are approving are 15.48 tons per day for VOC and 34.26 tons per day for NO_x for the Baton

Rouge area. These budgets were posted on the EPA website for public comment. No comments were received by EPA (67 FR 46970). EPA is approving these MVEBs because they are consistent with the control measures in the SIP, and the SIP as a whole demonstrates attainment of the 1-hour ozone standard. The rationale for our approval is detailed in the August 2, 2002, proposed action. Louisiana has committed to revise its 2005 MVEBs within two years after the release of MOBILE6. Louisiana has committed to not performing transportation conformity determinations during the second year following the release of MOBILE6 unless and until the State submits an MVEB which is developed using MOBILE6 and which we find adequate.

All States whose attainment demonstrations include the effects of the Tier 2/sulfur program have committed to revise and resubmit their MVEBs after we release MOBILE6. If a state fails to meet its commitment to submit revised budgets using MOBILE6, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

The final approval action we are taking today will be effective for conformity purposes only until revised MVEBs are submitted and we have found them adequate. In other words, the budgets we are approving today will apply for conformity purposes only until there are new, adequate budgets consistent with the State's commitments to revise the budgets. The new budgets will apply for conformity purposes after we find them adequate.

We are limiting the duration of our approval in this manner because we are only approving the attainment demonstration and the budgets based on the State's commitment to revise them. Therefore, if we confirm that the revised budgets are adequate, they will be more appropriate than the budgets we are approving for conformity purposes now.

If the revised budgets raise issues about the sufficiency of the attainment demonstration, we will work with the State to address the issues. If the revised budgets show that motor vehicle emissions are lower than the budgets we approve, a reassessment of the attainment demonstration's analysis will be necessary before reallocating the emission reductions or assigning them to the MVEB as a safety margin. In other words, the State must assess how its original attainment demonstration is impacted by using MOBILE6 v MOBILE5 before they reallocate any apparent motor vehicle emission

reductions resulting from the use of MOBILE6.

IV. What Revisions Concerning the 1990 Base Year Emissions Inventory, the 9% ROPP, and the 15% ROPP Are We Approving?

Under the 1990 Clean Air Act Amendments (CAAA), States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAAA require ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress projection inventory, and the modeling inventory are derived.¹ The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above.

States containing ozone nonattainment areas classified as marginal to extreme were required under section 182(a)(1) of the 1990 CAAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources by November 15, 1992. This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of VOC, NO_x, and carbon monoxide (CO).

Section 182(c)(2)(B) of the Act requires each State having one or more ozone nonattainment areas classified as serious or higher to develop a plan by November 15, 1994, that provides for additional actual VOC reductions of at least three percent per year, averaged over each consecutive three year period, beginning six years after enactment of the Act, until such time as these areas have attained the NAAQS for ozone. EPA approved the revisions to the 9%

ROPP for the Baton Rouge area on July 2, 1999 (64 FR 35930).

The revisions we are approving today consist of revisions to the 1990 Base Year Emissions Inventory, the 15% ROPP, and the 9% ROPP, which were submitted as part of the December 31, 2001, Attainment Plan/Transport SIP. Specifically, they were submitted as part of the substitute contingency measures. The substitute contingency measures are the subject of a separate EPA rulemaking action which published in the **Federal Register** on September 26, 2002.

The revisions consisted of emission reductions resulting from the installation of VOC emission controls at the Trunkline Gas Company—Patterson Compressor Station (hereinafter referred to as Trunkline or Trunkline facility) in St. Mary Parish. The Trunkline facility is located approximately 40 kilometers from the Baton Rouge ozone nonattainment area. In 1997, EPA issued a policy allowing 1-hour ozone nonattainment areas to take credit in their Post-1996 ROPP² for emission reductions obtained from sources outside the designated nonattainment area, provided the sources are no farther away than 100 km (for VOC sources) or 200 km (for NO_x sources) away from the nonattainment area.³

The Trunkline Gas Company had not accounted for 13.4 tons per day of VOC emissions. As a result, the VOC emissions from this facility had not been included in the point source emissions inventory for 1990. Emissions reported in a corrected 1992 annual emissions inventory submitted to LDEQ on June 6, 1997, are the best estimate of the source's 1990 base year emissions. These emissions were added back to the 1990 base year emissions inventory. The revised 1990 VOC base year inventory that included these Trunkline emissions (*i.e.*, 13.4 tons per day) would result in a total of 204.6 tons per day revised 1990 base year inventory.

An additional 2.0 tons per day of emission reductions required were identified in the 15% ROPP revisions. The additional 2.0 tons per day were offset by 1.4 tons per day "surplus" 9% ROPP reduction from the Trunkline

permit plus 0.6 tons per day of point source reductions (163 tons per year or 0.45 tons per day of VOCs from the Dow Chemical permit and 56 tons per year or 0.15 tons per day of VOCs from the BASF Corporation permit).

There were also an additional 1.2 tons per day of reductions required for the 9% ROPP identified in the revisions. These were taken from the 13.0 tons per day Trunkline emissions reductions that were netted from the post-90 emissions growth.

For additional detailed discussions on the above mentioned revisions please see our August 2, 2002, rulemaking (67 FR 50396). EPA received adverse comments concerning these revisions. Those comments are addressed elsewhere in this notice.

V. Implementation of RACM

Section 172(c)(1) of the Act requires attainment demonstration SIPs to provide for the implementation of all RACM as expeditiously as practicable. EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1). (See 57 FR 13498, 13560.) We also discussed the RACM requirements in our August 2, 2002, **Federal Register** proposal. EPA has reviewed the state's submitted analyses, the process used to review and select transportation control measures, the state's evaluation of potential stationary source control measures, and the attainment year emissions inventories for the Baton Rouge area. While the Act requires nonattainment areas to implement available RACM measures, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require intensive and costly implementation efforts or that produce relatively small emissions reductions that will not accelerate attainment of the ozone standard.

Analyses conducted by LDEQ concluded that the additional set of evaluated measures are not reasonably available for the Baton Rouge area, because: (a) Some would require an intensive and costly effort for numerous small area sources, and (b) the measures would not produce emission reductions sufficient to advance the attainment date in the Baton Rouge area. Therefore, the measures were rejected as possible RACM.

EPA received adverse comments on our proposed finding that Louisiana has satisfied the RACM requirements of the Act. Those comments are addressed below. EPA believes that the reductions from the measures rejected by the State would not accelerate attainment of the ozone NAAQS. Based upon EPA's

¹ Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991.

² EPA has historically allowed a surplus emission reduction in ROPP to be credited towards meeting the section 172 and section 182 requirements. EPA's rationale is that not allowing excess emission reductions to be used as contingency measures discourages areas from reducing emissions "as expeditiously as practicable" and is, therefore, inconsistent with section 172 of the CAA.

³ EPA memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM₁₀ NAAQS," from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, December 29, 1997.

review of the State's analysis and submission, the explanation provided in our August 2, 2002, proposed rule (67 FR 50391) and our interpretation of the Act, EPA is approving Louisiana's RACM analysis.

VI. What Are the Requirements for Full Approval of the Attainment Demonstration?

The attainment demonstration SIP must meet applicable criteria as detailed in the Act. The specific requirements of the Act for serious ozone nonattainment areas are found in section 182(c). Section 172 provides the general requirements for nonattainment plans. Refer to our August 2, 2002, proposal (67 FR 50391) for further details of requirements for attainment demonstrations.

VII. Did Louisiana Fulfill These Requirements for Full Approval?

EPA guidance published in 1996 provides that states may rely on a modeled attainment demonstration supplemented with additional weight of evidence (WOE) to demonstrate attainment ("Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS," EPA-454/B-95-007, June 1996). In our August 2, 2002, **Federal Register** notice we listed documents containing many of EPA's guidelines affecting the content and review of ozone attainment demonstration submittals. (67 FR 50394.) In that notice, we also described in detail the modeling requirements for an attainment demonstration as well as the additional analyses that may be considered when the deterministic approach, as described in EPA guidance, does not show attainment (67 FR 50394-50395). In the same **Federal Register** document, EPA details the statistical and modeling data presented in the state's attainment demonstration that support the validity of the ozone modeling results and the adequacy of the adopted ozone attainment strategies. The State concludes, and EPA concurs, that the modeling system performs at an acceptable level because it satisfactorily reproduces peak ozone concentrations relative to the monitored peak ozone concentrations. The modeling system adequately simulates the observed magnitude and spatial and temporal patterns of monitored ozone concentrations. Furthermore, the modeling results accurately differentiate between days with marginal ozone levels and days with elevated ozone concentrations. Therefore, based on the modeling and WOE results presented by the State which confirm the adequacy of the adopted emission control strategy,

EPA is approving the State's attainment demonstration. EPA also finds that the appropriate attainment date is November 15, 2005, based on the attainment demonstration. EPA received adverse comments regarding the State's modeled attainment demonstration. These comments and our responses are summarized elsewhere in this notice.

VIII. What Are the Criteria for an Attainment Date Extension?

EPA's policy regarding an extension of the ozone attainment date for the Baton Rouge area was set forth in EPA's notice of proposed rulemakings dated May 9, 2001 (66 FR 23646, 23650-23651) and August 2, 2002 (67 FR 50391). On July 16, 1998, a guidance memorandum entitled "Extension of Attainment Dates for Downwind Transport Areas" was issued by EPA and was published in a notice of interpretation on March 25, 1999 (64 FR 12221). In it, EPA set forth its interpretation of the Act regarding the extension of attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour ozone standard, and which are downwind of areas that have interfered with the moderate and serious nonattainment areas's attainment of the ozone standard by dates prescribed in the Act. EPA stated that it will consider extending the attainment date for an area or a state that:

1. Has been identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date or an upwind area in another state that significantly contributes to downwind ozone nonattainment;
2. Has submitted an approvable attainment demonstration with any necessary, adopted local measures, and with an attainment date that shows it will attain the 1-hour standard no later than the date that the emission reductions are expected from upwind areas in the final NO_x SIP call and/or the statutory attainment date for upwind nonattainment areas, *i.e.*, assuming the boundary conditions reflecting those upwind emission reductions;
3. Has adopted all applicable local measures required under the area's current ozone classification and any additional emission control measures demonstrated to be necessary to achieve attainment, assuming the emission reductions occur as required in the upwind areas; and
4. Has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

IX. How Did Louisiana Satisfy the Criteria for an Attainment Date Extension?

Louisiana satisfied the criteria for an attainment date extension as follows:

1. EPA finds that Louisiana has demonstrated that it is a downwind area affected by transport from the Houston area and that Houston contributes to the Baton Rouge area's ozone nonattainment;

2. As explained elsewhere in this notice, EPA finds that the State of Louisiana has submitted an approvable attainment demonstration that provides for attainment no later than the date emissions reductions are expected from the upwind area. Furthermore, all of the control measures needed for attainment have been adopted and submitted to EPA. These measures include all serious area requirements under section 182(c).

3. EPA has determined that Louisiana has adopted local measures required by the Act for the area's current classification as a serious nonattainment area. See Louisiana's SIP submittals and 67 FR 50391 (August 2, 2002) and the references cited therein for a discussion of the local measures adopted by the State.

4. With respect to implementation of all adopted measures as expeditiously as practicable but no later than the time upwind controls are expected, Louisiana has demonstrated to EPA that all control measures would be in place by November 15, 2005. This is two years in advance of the Houston, Texas, upwind area that is contributing to the Baton Rouge area's nonattainment. Since the local measures adopted by Louisiana necessary for attainment will be implemented no later than 2005 and EPA finds that they will be implemented as expeditiously as practicable, the State has shown that this element of the attainment date extension policy has been satisfied.

EPA therefore concludes, consistent with the attainment date extension policy, the State has met the criteria for an attainment date extension. EPA is thus extending the attainment date for the Baton Rouge area to November 15, 2005, to allow the upwind reductions to occur before attainment is required. Additional background information on EPA's attainment date extension policy can be found in the following **Federal Register** notices:

- 64 FR 14441 (March 25, 1999)
- 64 FR 12284 (March 18, 1999)
- 64 FR 18864 (April 16, 1999)
- 64 FR 27734 (May 21, 1999)
- 64 FR 70459 (December 16, 1999)
- 65 FR 20404 (April 17, 2000)
- 66 FR 585 (January 3, 2001)

66 FR 634 (January 3, 2001)
66 FR 666 (January 3, 2001)
66 FR 17647 (April 3, 2001)
66 FR 20122 (April 19, 2001)
66 FR 26913 (May 15, 2001)
66 FR 33996 (June 26, 2001)
67 FR 30574 (May 7, 2002)

EPA received comments regarding the basis for and application of the extension policy in granting the Baton Rouge ozone nonattainment area an attainment date extension. Those comments and our responses to comments are summarized elsewhere in this document.

X. What Action Is EPA Taking Regarding the Determination of Nonattainment as of November 15, 1999, and Reclassification Published on June 24, 2002?

On May 10, 2000, the Governor of Louisiana requested an attainment date extension for the Baton Rouge area. On May 9, 2001, EPA proposed its finding that the Baton Rouge area did not attain the 1-hour ozone NAAQS by the applicable attainment date (66 FR 23646). In that proposed action, we also stated that Louisiana was seeking an extension of its attainment date pursuant to EPA's attainment date extension policy. EPA proposed to take final action on the determination of nonattainment and reclassification of the Baton Rouge area only after the area had received an opportunity to qualify for an attainment date extension under the attainment date extension policy. Louisiana submitted an Attainment Plan/Transport SIP on December 31, 2001, for the Baton Rouge area. EPA was in the process of reviewing the Attainment Plan/Transport SIP when, on March 7, 2002, the United States District Court for the Middle District of Louisiana entered a Judgment ordering EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. *LEAN v. Whitman*, No. 00-879-A. In compliance with the Court's Order, EPA signed on June 5, 2002, and published in the **Federal Register** on June 24, 2002, (67 FR 42688) our determination that the Baton Rouge area did not attain the 1-hour ozone standard by November 15, 1999.

On June 24, 2002, EPA published its "Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area; State of Louisiana; Final Rule" (67 FR 42688). The effective date of that Determination and Reclassification was initially set at August 23, 2002. However, in a separate notice the same day (67 FR 42697), EPA proposed to extend the effective date of

the Determination and Reclassification until October 4, 2002. On August 20, 2002 (67 FR 53882), EPA finalized the modification of the effective date of the Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area, extending it until October 4, 2002.

In our August 2, 2002, **Federal Register** document (67 FR 50391), EPA proposed to withdraw the Notice of Determination of Nonattainment and Reclassification if we approved an attainment date extension prior to the effective date of the Determination of Nonattainment. As noted in our August 2, 2002, proposal, EPA believes this is appropriate for a number of reasons.

Since we are today granting an extension until November 15, 2005, for attainment of the 1-hour ozone standard, EPA's obligation under section 181(b)(2)(A) of the Act to determine attainment is thereby shifted into the future. As a result, we are hereby withdrawing the published nonattainment determination and the consequent reclassification, which has not yet gone into effect. Therefore, the Baton Rouge area retains its classification as a serious ozone nonattainment area. As stated previously, comments on our proposal to extend the attainment date are addressed below. In today's action, we are withdrawing the Notice of Nonattainment Determination and Reclassification, prior to its becoming effective. EPA received adverse comments relating to our proposal to withdraw the nonattainment determination and consequent reclassification in the event we granted an attainment date extension. Those adverse comments are addressed below in this document.

XI. What Comments Were Received on the Proposals Covered by This Final Action, and on the March 25, 1999, Publication of the Attainment Date Extension Policy, and How Has EPA Responded to Those?

EPA received comments from the public on the Notices of Proposed Rulemaking published on May 9, 2001; June 24, 2002; and August 2, 2002, for the proposed approval of the Baton Rouge's ozone attainment demonstration and attainment date extension. EPA received adverse comments from Tulane and LEAN for our May 9, 2001 and the August 2, 2002, proposals. We received adverse comments from Earthjustice on our August 2, 2002, proposal. EPA also received comments in support of the proposals from 24 commenters.

EPA sets forth below in this section our responses to adverse comments received on these notices which are relevant to this rulemaking. EPA also received comments relating to the proposal to determine that the Baton Rouge area did not attain the ozone standard by November 15, 1999. These comments relate primarily to the necessity of making the nonattainment determinations, and the appropriate attainment date if the area were reclassified. In EPA's June 24, 2002, final rule, EPA responded to adverse comments on the proposed determination that the area did not attain the standard by November 15, 1999, and finalized the reclassification to severe nonattainment. (67 FR 42688, 42693-42695). The effective date of that action was extended to October 4, 2002. Today we are withdrawing our June 24, 2002, final rule.

Finally, some of the comments received in Docket A-98-47 on EPA's notice regarding "Extension of Attainment Dates for Downwind Transport Areas" 64 FR 12221 (March 25, 1999), are relevant to this rulemaking. EPA incorporates its responses to those comments, set forth in 66 FR 586, 66 FR 634, 66 FR 666 (January 3, 2001), and 66 FR 26913 (May 15, 2001), 66 FR 33996 (June 26, 2001), 66 FR 33996 (June 26, 2001), and 67 FR 30574 (May 7, 2002), insofar as herein relevant.

The following discussion summarizes and responds to all adverse comments:

Comments Received in Response to the May 9, 2001 (67 FR 23646), Proposal

Comment 1: Eleven comment letters were received with statements of support for EPA's proposed eligibility for a transport-based attainment date extension. Two comment letters were received in opposition to the transport-based attainment date extension. The commenters in support believed that the Baton Rouge area was affected by the transport of ozone from the Houston-Galveston, Texas, nonattainment area (hereinafter referred to as Houston). The commenters in opposition believed that either the Baton Rouge area did not meet the conditions under EPA's transport-based attainment date extension policy, that the time for making an attainment determination was overdue, and/or the Act did not give EPA the authority to grant the transport-based attainment date extension.

Response 1: In this final rule, EPA responds to the relevant adverse comments on EPA's legal authority to extend the Baton Rouge area's attainment date received in response to

that proposal. The responses to comments in a number of prior rulemakings concerning the attainment date extensions granted in Washington, DC, Springfield, Massachusetts, Greater Connecticut, Beaumont, Texas, the St. Louis area, and Atlanta, Georgia, are relevant and responsive to the comments received on Baton Rouge. In those prior rulemakings, EPA responded to similar challenges to the legality of the attainment date extension policy, and EPA therefore incorporates its responses to those comments, set forth in 66 FR 586, 66 FR 634, 66 FR 666 (January 3, 2001), 66 FR 26913 (May 15, 2001), 66 FR 33996 (June 26, 2001), and 67 FR 30574 (May 7, 2002), insofar as herein relevant.

Many of the legal arguments and other issues raised in the comments addressing the attainment date extension proposed in Baton Rouge have also been addressed in the briefs EPA has filed in litigation concerning the extensions in Washington, DC *Sierra Club v. Whitman*, Nos. 01–1070 (DC Cir.), St. Louis, *Sierra Club v. EPA* 01–2844, No. 01–2845 (7th Cir.), *Sierra Club v. Whitman*, Nos. 01–5123 and 01–5299 (DC Cir.), and Beaumont, *Sierra Club v. EPA*, No. 01–60537 (5th Cir.). These briefs have been placed in the docket for this rulemaking and are incorporated herein by reference.

Commenters cite to prior case law in support of such propositions as: a list of specific remedial provisions excludes the possibility of inferring that Congress intended any additional forms of relief; an agency cannot substitute its policy choices for those of Congress; the attainment deadlines are central to the CAA and cannot be adjusted. EPA has previously set forth its views on these issues in its prior responses and in its briefs. None of the cases or arguments cited by the commenters alters these views, or undermines EPA's authority to interpret the text of the statute in its full context so as to give effect to Congressional intent. EPA is implementing the attainment date extension not as a mere Agency policy preference, but in order to fulfill Congressional intent. Moreover, even in the absence of explicit statutory authority, EPA may grant extensions of time under the CAA where it concludes that Congress would have done the same had it foreseen the circumstances presented. *NRDC v. EPA*, 22 F.3d 1125 (D.C. Cir. 1994).

Please see the responses to related comments concerning Baton Rouge's eligibility for an extension in the comment section below.

Comments Received in Response to the August 2, 2002 (67 FR 50391), Proposal

Twenty-seven comment letters were received on our August 2, 2002, proposed approval rulemaking. Of these twenty-seven letters, we received four comment letters with adverse comments dealing with our proposed action.

Comment 2: One commenter contends that EPA lacks statutory authority to approve the request for an attainment date extension based on EPA's attainment date extension policy. The commenter asserts that the current classification for the Baton Rouge area is "severe" and not "serious." The commenter contends that EPA has already determined that the area failed to attain the ozone standard within the meaning of section 181(b)(2)(A) of the Act, and that, therefore, the Baton Rouge area was reclassified by operation of law, despite EPA's refusal to acknowledge this. The commenter incorporates by reference its arguments as to the legality of the attainment date extension policy contained in its briefs in *Sierra Club v. EPA*, 294 F.3d 155, 160–162 (DC Cir. 2002); Opening and Reply Briefs of Sierra Club in *Sierra Club v. EPA*, DC Cir. 01–1070, at Part I; Earthjustice Comments dated April 26, 1999, addressing EPA's proposal entitled "Extension of Attainment Dates for Downwind Transport Area." 64 Fed. Reg. 14441 (March 25, 1999); Transcript of Oral Argument in *Sierra Club v. EPA*, DC Cir. 01–1070 (February 4, 2002).

Response 2: EPA has responded to the contentions regarding the legality of EPA's attainment date extension policy in its responses to comments on the May 9, 2001, proposed rulemaking. As to the assertion that the classification of the Baton Rouge area is "severe" and not "serious," EPA, prior to the Court-ordered rulemaking published on June 24, 2002, had issued no final rulemaking determining that the Baton Rouge area had not attained the standard by November 1999. Therefore, the Baton Rouge area was not reclassified to "severe." Moreover, since EPA is today issuing a final attainment date extension and withdrawing its June 24, 2002, determination prior to that determination taking effect, the Baton Rouge area remains classified as a serious area. EPA incorporates its responses to the comments contained in its briefs in the cases cited above.

Comment 3: One commenter argues that the DC Circuit has decided adversely to the attainment date extension, and that similar cases are pending before the Seventh Circuit and before the Fifth Circuit, which is considering this issue in the *Sierra Club*

v. EPA, (No. 01–60537), argued September 4, 2002. EPA should await the outcomes of those cases. The fact that the Louisiana SIP provides for RACM and ROPP does not fix the proposed rules shortfalls. The area should still be reclassified.

Response 3: While the DC Circuit has issued a decision concerning Washington, DC, EPA nevertheless believes that its approach is justified and is currently continuing to litigate the pertinent legal issues in two other Circuits. The Seventh Circuit has yet to rule on the attainment date extension issue with regard to the St. Louis area, and the Fifth Circuit, which would have jurisdiction to review EPA's rulemaking regarding Baton Rouge, has yet to rule on the attainment date extension issue in the context of Beaumont, Texas. When these Circuits issue their decisions in these cases, EPA will reevaluate its position with respect to Baton Rouge.

Comment 4: Commenters claim that on two occasions—on separate amendments offered by Senator Kasten in 1990 and Senator Levin in 1994, Congress rejected amendments to the Clean Air Act providing for attainment date extensions.

Response 4: Neither amendment cited by commenters corresponds with EPA's attainment date extension policy, and there is no evidence that either was acted upon by Congress. In its prior rulemaking notices and briefs EPA has answered the arguments that the commenters raised on the Kasten amendment. As to the Levin amendment cited by commenters, this bill did not address attainment date extensions, but rather a revision to section 182(h)(1) concerning rural transport areas that was aimed at original classifications. This proposed amendment did not propose attainment date extensions, but rather dealt with areas that made no significant contribution to their own ozone concentrations, and proposed to treat them as rural transport areas. In offering this amendment, Senator Levin expressly noted that EPA was grappling with the issue of other areas, whose air quality is affected by the area's own emissions as well as those from upwind areas. Senator Levin's bill did not address this situation, because he acknowledged EPA's plans "to issue a new policy on ozone transport that will hold areas responsible only for that portion of the ozone problem which they cause." However, this new policy is expected to only correct another inequity in the act, the fact that downwind areas suffering from significant ozone and other pollution

transported from more severely polluted areas have less time to achieve attainment. The change in attainment deadlines will not address the problem of areas inappropriately designated in the first place. 140 Cong. Rec. S10538-05 (August 3, 1994).

Comment 5: Commenters contend that it is too late for Louisiana to apply for a transport extension, and that any application for an extension should be denied on the failure of the state to submit a timely application for an extension and for failure to meet the requirements of the attainment date extension in a timely fashion.

Response 5: EPA disagrees that it is too late to grant Louisiana an attainment date extension. First, Louisiana is not applying for an attainment date extension under section 181(a)(5), but in accordance with EPA's transport-based attainment date extension policy. EPA believes that the area timely applied for an attainment date extension pursuant to EPA's attainment date extension policy and that it has made the requisite showing for an extension based upon transport. In its notice of proposed rulemaking EPA set forth the history of this rulemaking action and also noted that EPA had provided additional time for the area to submit documentation in support of its request for an attainment date extension. 67 FR 50391 (August 2, 2002); 66 FR 23646 (May 9, 2001), 66 FR 38608 (July 25, 2001) (supplemental proposed rule). As EPA noted in its final rulemaking of June 24, 2002 (67 FR 42697), Footnote 3, EPA received no adverse comments on its supplemental proposal to extend Louisiana's transport SIP submission date to December 31, 2002.

Comment 6: Congress foresaw the problem of ozone transport and provided a solution under sections 110 and 126. Louisiana never petitioned EPA under section 126 for a finding that sources in Texas significantly contributed to ozone problems in Baton Rouge.

Response 6: As EPA has noted in prior rulemakings, because a functional understanding of transport was late in coming, the tools envisioned by Congress could not be deployed in time to provide the intended relief. The commenter's contention that EPA should not grant Baton Rouge an attainment date extension because Louisiana should have acted earlier to commence a section 126 petition proceeding to reduce emissions from upwind states ignores the fact that an adequate analysis and allocation of responsibility for transport did not exist in time to support relief by the area's original attainment date. EPA

incorporates by reference its responses to the comments contained in its briefs in the cases cited above.

Comment 7: Commenters argue that EPA should not approve the RACM analysis for the Baton Rouge area because it does not meet the requirements of the CAA. They also argue that the State and EPA cannot lawfully limit RACM analyses to only those measures likely to advance attainment dates, nor can they lawfully apply an "intensive and costly effort" test. Opening and Reply Briefs of Sierra Club in *Sierra Club v. EPA*, DC Cir. 01-1070, at Part II. The commenter adds that even if that were not the case, *arguendo*, the states and EPA must still consider a reasonable range of potential RACM measures, and to the extent that they reject measures as allegedly not constituting RACM, must offer a reasoned and statutorily permissible explanation for doing so. Another commenter argues that control measures are clearly available. The commenters go on to state that: (1) There are many stationary VOC emissions to work with, and (2) many industries in the nonattainment area are reducing their VOC emissions from stationary sources. Since these facilities are actually making these reductions, the commenter concludes that the SIP argument that VOC reductions at this time are deemed to be technologically infeasible is clearly incorrect. The commenter further states that the LDEQ refers to computer modeling results in the SIP to imply that the requirements of RACM in the CAA can be avoided.

Response 7: Louisiana performed a RACM analysis for potential control of NO_x and VOC emission sources not included in the attainment demonstration for the Baton Rouge 1-hour ozone attainment area. Each control measure option was evaluated according to: (1) The State's authority to implement controls; (2) the amount of NO_x reductions created by the control measure; (3) the amount of VOC reductions created by the control measure; (4) whether a similar control measure is already being implemented in the SIP; (5) the cost effectiveness of the control; (6) whether SIP credit has already been taken for the measure; and (7) whether the measure can be implemented to advance the attainment date. LDEQ conducted analyses of the reductions available from control of VOC and NO_x emissions from on-road and off-road mobile sources, major stationary sources of VOC and NO_x, and VOC and NO_x area sources.

In our August 2, 2002, proposed approval, EPA referenced the methodology Louisiana employed to

analyze transportation control measures (TCM) RACM for mobile sources. Louisiana's analysis is explained in Chapter 5 of the SIP. LDEQ analyzed a broad range of TCMs identified and listed in section 108(f) of the Act for RACM availability. As part of its analysis, LDEQ relied on the most recent and comprehensive TCM evaluation study that exists for the Baton Rouge area and reflects updated attainment year vehicle miles traveled (VMT) and emissions reduction estimates. Based on its analysis, LDEQ included in the SIP an enforceable TCM to implement an advanced transportation management system and a vehicle I/M program. Relative to the total NO_x reductions required to demonstrate attainment of the 1-hour ozone NAAQS in the Baton Rouge area, additional NO_x reductions from other TCMs in the Baton Rouge area that might be implemented constitute a very small percentage (approximately 1%) of the total reductions required for attainment. Thus, LDEQ concluded, an EPA agrees, that for RACM purposes implementation of additional TCMs would not produce emissions reductions sufficient to the advance the attainment date.

Louisiana also analyzed control options as RACM for major stationary sources of VOC and NO_x. Louisiana has implemented Reasonable Available Control Technology (RACT) for major stationary sources of NO_x and VOC. As the commenter notes, many industries in the Baton Rouge area are already reducing their VOC emissions from stationary sources to meet the VOC RACT requirements of the Act. The 24% rate-of-progress VOC emissions reductions required under the Act have already been achieved in the Baton Rouge area. Modeling analysis for the Baton Rouge area indicates that a 30% "across the board" reduction in VOC emissions yields less than a 1 ppb decrease in the ozone peak for all three modeled episodes. Based on its analysis, LDEQ concluded that VOC reductions beyond those already in place would not be sufficient to bring the area into attainment sooner than 2005 and were not technologically feasible or cost effective at this time. Furthermore, the modeled attainment demonstration shows that the Baton Rouge area relies upon emissions reductions from outside of the attainment area and from federal rules with implementation dates that will not occur until 2005. LDEQ performed a similar analysis for NO_x RACM. EPA has reviewed and agrees with the State's RACM analysis. For further details concerning Louisiana's

RACM analysis please refer to the RACM TSD and LDEQ's RACM analysis.

The EPA's approach toward the RACM requirement is grounded in the language of the CAA. Section 172(c)(1) states that a SIP for a nonattainment area must meet the following requirement: "In general.—Such plan provisions shall provide for the implementation of **all reasonably available control measures as expeditiously as practicable** (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and **shall provide for attainment of the national primary ambient air quality standards.**" [Emphasis added.] The EPA interprets this language as tying the RACM requirement to the requirement for attainment of the national primary ambient air quality standard. The CAA provides that the attainment date shall be "as expeditiously as practicable but no later than * * *" the deadlines specified in the CAA. EPA believes that the use of the same terminology in conjunction with the RACM requirement serves the purpose of specifying RACM as the way of expediting attainment of the NAAQS in advance of the deadline specified in the CAA. As stated in the "General Preamble" (57 FR 13498 at 13560, April 16, 1992), "The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures **as are reasonably available for implementation in the area** as components of the area's attainment demonstration." [Emphasis added.] In other words, because of the construction of the RACM language in the CAA, EPA does not view the RACM requirement as separate from the attainment demonstration requirement. Therefore, EPA believes that the CAA supports its interpretation that measures are not RACM if they do not advance the attainment date. In addition, EPA believes that it would not be reasonable to require implementation of measures that would not in fact advance attainment (see 57 FR 13560). EPA has historically taken this interpretation and consistently implemented it through guidance since 1979 (see 44 FR 20372, 20375, April 4, 1979).

The term "reasonably available control measure" is not actually defined in the CAA. Therefore, the EPA interpretation that potential measures are not to be RACM if they require an intensive and costly effort for numerous small area sources is based on the

common sense meaning of the phrase, "reasonably available." A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. Ready implementation also includes consideration of whether emissions from small sources are relatively small and whether the administrative burden, to the States and regulated entities, of controlling such sources was likely to be considerable. As stated in the General Preamble, EPA believes that States can reject potential measures based on local conditions including cost. 57 FR 13561.

When EPA presented this statutory argument in support of its RACM policy to the U.S. Court of Appeals for the DC Circuit in defense of its approval of the Washington DC ozone SIP, the DC Circuit found reasonable EPA's interpretation that measures must advance attainment to be RACM. *Sierra Club v. EPA*, 294 F.3d 155, 162 (DC Cir. 2002). Specifically, the Court found that:

EPA reasonably concluded that because the Act 'use[s] the same terminology in conjunction with the RACM requirement' as it does in requiring timely attainment, compare 42 U.S.C. 7502(c)(1) (requiring implementation of RACM 'as expeditiously as practicable but no later than' the applicable attainment deadline), with *id.* § 7511(a)(1) (requiring attainment under same constraints), the RACM requirement is to be understood as a means of meeting the deadline for attainment.

Id. Moreover, the DC Circuit rejected, as a "misreading of both text and context," Sierra Club's arguments that EPA's interpretation of RACM conflicts with the Act's text and purpose and lacks any rational basis.

Also, LDEQ's analysis indicates that the development of rules for a large number of very different source categories of small sources for which little control information may exist will likely take much longer than development of rules for source categories for which control information exists or that comprise a smaller number of larger sources. It is less likely that the emission reductions from such additional rules in the nonattainment area would advance the attainment date more than emission reductions achieved from controls on major stationary sources, mobile sources, and federal rules in the Baton Rouge area. Thus, it is of greater value and more expeditious for the State to expend the administrative effort and costs to pursue larger reductions from a smaller number of sources.

When EPA presented this statutory argument in support of its RACM policy

to the DC Circuit in defense of its approval of the Washington DC ozone SIP, the DC Circuit also found reasonable EPA's interpretation that it could consider costs in a RACM analysis and that measures may be rejected if they would require an intensive and costly effort for regulation of many small sources. *Sierra Club v. EPA*, 294 F.3d at 162, 163.

Finally, the SIP does not, as the commenter claims, imply that the requirements of RACM in the CAA can be avoided in the nonattainment area based on the attainment modeling. The SIP merely notes that the attainment modeling along with the proposed NO_x reductions from major stationary sources, mobile sources and federal rules are shown to be sufficient for the Baton Rouge area to meet the NAAQS for ozone by 2005, and that there are no additional RACM to advance the attainment date. We do not consider measures as RACM for the Baton Rouge area if they do not advance the attainment date, as recently upheld by the DC Circuit Court. We are still requiring the State to demonstrate that all local measures that are RACM are implemented as expeditiously as practicable.

Comment 8: A commenter states that EPA cannot lawfully approve SIPs which lack rate of progress reductions for the full period by the CAA—which includes not just the reductions required during the period up to November 15, 1999, but also 9% VOC reductions from November 15, 1999 to November 15, 2002, and another 9% reductions from November 15, 2002 to November 15, 2005. Another commenter states that the SIP must include reductions until the area achieves its attainment date. The commenter concludes that since the attainment date is extended, the reasonable further progress demonstration required in Section 182(c)(2)(B) must be included in any approvable SIP. A commenter asserts that the CAA does not allow for the revisions to the 15% ROPP, the 1990 Base Year Emission Inventory, nor the Post-1996 ROPP because the CAA does not allow ROPP reductions to occur outside the nonattainment area. Additionally, the commenter states that in order for Louisiana to take credit for the emission reductions outside the nonattainment area the State must prove that the reductions would result in actual reductions in ozone within the attainment area. The commenter concludes that LDEQ did not specifically model emissions reductions from Trunkline and therefore should not be allowed to include these credits in its ROPP. Finally, the commenter argues

that the reductions have already occurred and since the area remains in nonattainment after these reductions then the reductions obviously are not going to solve the ozone problem and can not be considered progress. The commenter also incorporates by reference comments submitted by LEAN on EPA's proposed approval of Louisiana's contingency measures dated May 20, 2002.

Response 8: EPA's guidance did not interpret the period of time after granting the attainment date extension based on transport as requiring additional rate of progress increments from the downwind area, since we determined that the reason the area had not attained was due to upwind transport. Consistent with the purposes of the attainment date extension policy, EPA believes it would be inequitable to require areas in which attainment is affected by transport to meet additional local ROPP requirements. EPA believes it would be unreasonable to require the downwind area into such progress requirement reductions from local sources, when the combination of local reductions with upwind area source emission reductions is what will bring the area into attainment. In any event, to the extent that it should be determined otherwise, and that any ROPP required should be imposed on the downwind area, this would not be required until EPA grants the attainment date extension and provides the area with a later attainment date. Since the requirement was not previously due, fulfilling the requirement, if any is deemed to exist, is not a condition of receiving the attainment date extension. Responses to Louisiana's contingency measures are being addressed in the **Federal Register** final action for that component of the SIP.

In reference to the comment concerning the modeling of the emission reductions from Trunkline, the commenter is referred to the above mentioned December 29, 1997, EPA guidance document. Pages 5 and 6 of the guidance document discuss EPA's guidance on ROPP. EPA's guidance " * * * only requires that an area in nonattainment for the 1-hour NAAQS should be allowed to take credit for emissions reductions obtained from sources outside the designated nonattainment area for the post-1999 ROP requirement as 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 guidance does not indicate that modeling of ROPP emissions should be conducted for EPA to allow the use of ROPP emissions within 100km (VOC)

and 200km (NO_x) of the nonattainment area. Trunkline's emissions changes are included in the overall modeling analysis, and the results show that emission reductions are necessary in the surrounding attainment parishes for the Baton Rouge nonattainment area to demonstrate attainment. Domain-wide modeling, rather than source specific modeling of facility emission changes such as Trunkline's, is used to tell us what level of reductions are needed for the nonattainment area to demonstrate attainment.

Comment 9: One commenter asserts that EPA cannot lawfully approve SIPs that lack contingency measures. The commenter further states that as shown in the commenter's *Sierra Club v. EPA* briefs, contingency measures must be additional measures that activate in the event of a contingency, not surplus reductions from measures being implemented anyway (e.g., as part of the attainment rate-of-progress SIP). *Sierra Club*, 294 F.3d at 164; Opening and Reply Briefs of Sierra Club in *Sierra Club v. EPA*, DC Cir. 01-1070, at Part IV.

Response 9: EPA has found the contingency measures in the SIP to be surplus, permanent and federally enforceable. EPA is approving these contingency measures in a separate action which published in the **Federal Register** on September 26, 2002. See EPA's final action on the contingency measures for responses to related comments.

Comment 10: A commenter states that EPA should not withdraw its June 24, 2002, rulemaking determining that Baton Rouge was in nonattainment and reclassifying it from "serious" to "severe" because to do so would be against both the plain language of the CAA and Congressional intent.

Response 10: EPA is withdrawing its June 24, 2002, rulemaking relating to the Baton Rouge reclassification based on Louisiana fulfilling EPA's attainment date extension policy and EPA's approval of their attainment demonstration and transport SIP. See related responses on EPA's attainment date extension policy above.

Comment 11: The commenter indicates that it is a poor idea to adopt contingency measures that require emission reductions outside the nonattainment area.

Response 11: The CAA gives the states considerable latitude and discretion in adopting state implementation plans. The CAA also recognizes that addressing ozone nonattainment within a given area may involve regulation of emissions from sources outside of the nonattainment area. See CAA sections concerning

international pollution (42 U.S.C. 7415), interstate transport commissions (42 U.S.C. 7506a), and interstate pollution abatement (the so-called "good neighbor" section, 42 U.S.C. 7426). Since a state may petition the EPA to regulate sources beyond the state's boundaries in order to address a nonattainment area within the state, the state is certainly free to regulate precursor emissions outside the nonattainment area, but still within the state, that impact the nonattainment area. Furthermore, LDEQ did conduct a modeling sensitivity run (Run LA-1) to evaluate the effectiveness of a 30% NO_x reduction in low-level and elevated sources in Grid D. This modeling sensitivity run demonstrated that additional reduction in the simulated ozone concentrations and 1-hour ozone exceedance exposure within the 5 parish nonattainment area is obtained from NO_x emission reductions within Grid D from parishes that are outside the nonattainment area.

Comment 12: One commenter suggests that the Classification and Regression Tree (CART) analysis does not demonstrate that there is a significant problem with ozone transport. Another commenter indicated that the state used an insufficient amount of data (5 years vs. 20 years) in determining the ranking system to calculate expected ozone exceedances (ExEx), leading to uncertainty about the reliability of the conclusions reached based on these data.

Response 12: The CART analysis was conducted to support the episode selection portion of the Baton Rouge local modeling analysis. The CART analysis that was done for the local modeling analysis was not specifically designed to identify regional transport conditions. In addition to a transport analysis, the attainment demonstration must address whether or not local measures are needed for attainment. If the attainment demonstration indicates that local control measures are required, the demonstration must quantify the level of the needed local emission reductions. For the local portion of the attainment demonstration, the episodes modeled were to be primarily "home-grown," rather than dominated by transport. Thus, the meteorological and air quality data used in the CART analysis to characterize potential modeling episodes were all local Baton Rouge data. (The only non-Baton Rouge data was the upper air data obtained from near-by Slidell, Louisiana, which has the closest radar profiler.) This particular CART analysis did not consider other parameters that may have been more indicative of regional

transport (e.g. surface winds at Calcasieu, Lafayette, etc.).

Although the use of *local* Baton Rouge data alone is not sufficient to fully characterize regional transport conditions in Louisiana and neighboring states, the CART analysis approach was a component relied upon, to demonstrate the frequency of transport. Meteorological and air quality data for a five-year period (1996–2000) were also characterized and analyzed. The results indicated that 7 percent of the Baton Rouge exceedance days (*i.e.*, 2 out of 28 exceedance days) were potentially associated with transport of ozone and/or precursor pollutants from the Houston area. EPA believes these data demonstrate a sufficient impact from Houston to satisfy the criteria of our attainment date extension policy. Another CART analyses of frequently occurring meteorological conditions during ozone exceedances for a 10 year period (1989–1998) indicated that a “Gulf-High” regime was associated with 30% of the Baton Rouge exceedance days during that period. A “Gulf-High” existed in the modeled August 19, 1993 episode. This modeling demonstrated that transport of emissions from the Houston area to the Baton Rouge area. The impact from the Houston area upon the Baton Rouge area’s ozone concentration was 2–6 ppb.

We disagree that the State used insufficient data in determining the ranking system. The CART analysis approach to characterizing episodes and ranking them on the basis of severity is an alternate approach that has been accepted by EPA for other 1-hour ozone SIP modeling applications. These include Atlanta, Georgia, Birmingham, Alabama, and Louisville, Kentucky. The approach provided in EPA guidance (Cox and Chu) uses meteorological data of a twenty-year record. Under the same meteorological conditions, expected ozone concentrations would possibly be very different if the magnitude or ratios of the VOC and NO_x emissions are different. Over the last 20 years the effect of Federal and state regulations have resulted in changes in ratios/quantities of VOC and NO_x anthropogenic emissions in the Baton Rouge area. Thus, the CART approach applied in the Baton Rouge SIP modeling analysis takes into account only the most recent 5 years of data. This approach is followed in an attempt to avoid potential complications inherent in assessing correlations between meteorological conditions and the observed concentrations when a major influencing variable (*i.e.* emissions inventory) has likely changed

over a longer period, such as twenty years.

Comment 13: The “gulf-high” conditions associated with transport do not demonstrate that the Baton Rouge area is suffering from transport from the Houston-Galveston area.

Response 13: We disagree. The August 19, 1993, episode was a “Gulf-High” regime day, and the modeling results demonstrated that the Houston area significantly contributed to the Baton Rouge area. This modeling showed an impact of 2–6 ppb on ozone concentrations in the Baton Rouge area. CART analysis approach also characterized this episode as “Gulf-High” regime. We agree that the relative positioning of the center of the high pressure zone in the Gulf of Mexico as well as the strength of circulation winds determine whether or not transport from the Houston area occurs and the level of impact of the transported emissions when transport occurs. Because of these considerations, transport from Houston to Baton Rouge does not always occur under all conditions labeled “gulf-high”.

Even so, the important point is that on many exceedance days, the Baton Rouge and surrounding areas have experienced meteorological conditions under which transport from Houston could have contributed to the exceedance. Some 30% of the exceedances in a ten-year period, and some 7% of the exceedances in a 5-year period, were associated with “Gulf-High” days. It is reasonable to conclude that some appreciable portion of the gulf-high days were conducive to transport from Houston.

Similarly, other meteorological regimes may be conducive to transport from Houston. These include “coastal return” days and “continental high” days as discussed further in the Technical Support Document. These meteorological regimes may also allow for transport from Houston. Because they are common regimes, it is reasonable to assume that some occurred on exceedance days. Further, it is reasonable to assume that on some of those days, transport from Houston occurred.

This information concerning the meteorological regimes must be considered together with modeling that specifically identifies transport from Houston, as discussed elsewhere.

Accordingly, although the data is insufficient to quantify specifically the number of exceedance days with meteorological regimes conducive to transport from Houston, and the number of days in which transport from Houston actually occurred, EPA believes that the data is sufficient to

support a conclusion that transport from Houston occurred frequently enough, since the Baton Rouge area is only allowed 3 exceedances in a 3-year period, to adversely affect the area’s ability to attain. Thus for Baton Rouge to attain, controls in Houston area, as well as in Louisiana, are necessary. Louisiana has demonstrated that during some Baton Rouge area exceedances, ozone levels are influenced by emissions from the Houston area, and that the Houston area emissions affect the Baton Rouge area’s ability to meet attainment of the 1-hour ozone standard by November 15, 1999.

Comment 14: Modeling used by the State (based on August 19, 1993) does not demonstrate that the Baton Rouge area is suffering from ozone transport. Another commenter indicated that EPA’s own data do not show a significant effect on Baton Rouge from Houston’s air pollution.

Response 14: We disagree. The August 19, 1993, modeling results demonstrated that the Houston area significantly contributed to the Baton Rouge area. This modeling showed an impact of 2–6 ppb on ozone concentrations in the Baton Rouge area when the Houston area emissions are zeroed out. A “Gulf-High” existed during the modeled August 19, 1993 episode. The August 1993 episode occurred during the Gulf of Mexico Air Quality Study (GMAQS) field program and the modeling of that episode benefitted from intensive, enhanced ground level, upper-air, and aircraft measurements. The episode consisted of a ramp up day on August 18th and a primary episode day on August 19th. Due to the influence of the initial and boundary conditions, EPA guidance does not recommend the State to take the ramp-up day (*i.e.*, August 18th) into consideration in developing a control strategy. The observed regional conditions, including the additional meteorology measurements from the field study, during this period were found to be conducive for potential transport of pollutants from the Houston area to the Baton Rouge 5-parish nonattainment area. CART analyses indicate that transport conditions have occurred historically and one episode (the August 19, 1993) has been modeled to demonstrate transport.

In addition, a modeling run was conducted for a period in 1997 (8/30–31) in which not only Houston area emissions, but also Beaumont Port-Arthur emissions were zeroed out. This run indicated impacts from the zero-out in a north-northeasterly direction from southeast Texas, with a 10 ppb impact in Little Rock which is approximately

twice the distance from southeast Texas to Baton Rouge. The run lends support to the conclusion that Houston contributes to exceedances in the Baton Rouge area. A relatively small shift in the direction of the winds during the period modeled may have resulted in a bigger impact in the Baton Rouge area, which supports the conclusion that some of the exceedances in the Baton Rouge area experienced contributions from Houston. The commenter refers to EPA's "own data" in the proposed notice where it states that 7% of the ozone exceedances in a five year period were associated with "gulf-high" met regime with high level westerly winds. This statement was derived from the Baton Rouge SIP's record. It is only one component of the information that EPA has looked at in determining that the Baton Rouge area is impacted by transport for Houston area emissions. EPA has made a judgement that the frequency of occurrence for transport of Houston's air pollution is significant enough to be of concern in Baton Rouge. Baton Rouge's ability to attain is affected by the impact on it from the Houston area, as documented above. For further information, see the Technical Support Document and the State's submittals.

Comment 15: Table 1-3 of Louisiana's SIP shows that the model drastically over-predicts the amount of ozone that was actually formed on August 18 and 19, 1993, in the Baton Rouge area based upon the "Unpaired accuracy of the peak concentration" metric.

Response 15: The model does not drastically over-predict taking into account all of the metrics and graphics. Unpaired accuracy of the peak concentration is just one of the metrics used to evaluate model performance and the August 18 day is the only day outside the EPA guidance value of ± 20 percent. The August 18 day was the model ramp-up day and the August 19 day was the primary episode day. As previously noted, due to the influence of the initial and boundary conditions, EPA guidance does not recommend the State to take the ramp-up day (*i.e.*, August 18th) into consideration in developing a control strategy. The August 19 day is within the EPA guidance value for this metric. This metric is a domain wide peak and the model may be predicting for the August 18 day, a peak at a location that did not have a monitor. Another metric evaluated is the Normalized Bias, which measures the model's ability to replicate observed patterns during the times of day when available monitoring and modeled data are most likely to represent similar spatial scales. The

EPA guidance value for Normalized Bias is ± 15 percent and the values for the August 18 and 19 days are -1.9% and -0.2% . This indicates that the model is doing a very good job in predicting concentrations similar to the observed monitored concentrations. For further analyses that support approval of this episode (without the zero out run), EPA utilized the Technical Support Document (June 1996) and submittals from LDEQ for the previous attainment demonstration SIP. EPA relied upon the complete package of analyses submitted by LDEQ in approving the Baton Rouge SIP.

Comment 16: One commenter asserts that the model over predicts ozone and that this error could be due to errors in the models input that also produce a result of transport from Houston to Baton Rouge. The commenter then indicates that this is only one possible interpretation for the over-prediction of the modeled ozone values.

Response 16: The August 1993 episode occurred during the Gulf of Mexico Air Quality Study (GMAQS) field program and the modeling of that episode benefitted from intensive, enhanced ground level, upper-air, and aircraft measurements. The observed regional conditions during this period were found to be conducive for potential transport of pollutants from the Houston area to the Baton Rouge 5-parish nonattainment area. It occurred in the "Gulf-High" regime, and the results demonstrate that emissions from the Houston area are contributing significantly to the Baton Rouge area exceedances. The modeling runs removing all of the anthropogenic emissions in the Houston area showed significant changes in ozone concentration in the Baton Rouge area. The meteorological model showed that some air masses were coming from the Houston area. Therefore the meteorological modeling indicated that some air masses, and their pollution concentrations, were transported from the Houston area to the Baton Rouge area during this 1993 episode. The fact that the 1993 modeling is predicted ozone concentrations in the domain that are higher than the monitored values does not lead to a conclusion that there is an error in the modeling that would result in an erroneous determination in the magnitude of the impact of transport from Houston to Baton Rouge. Where there are monitors, the modeling has predicted comparable ozone concentrations for the overall Grid D domain. The modeling indicated ozone concentrations higher than values monitored in the Grid D domain in grid cells where monitors did not exist. It is

not unusual for modeling to generate higher values in grid cells without monitors, since there are many more grid cells without corresponding ozone monitored values than there are grid cells with monitored values. This is an artifact of modeling and does not, in any way, mean that the transport modeling over-predicts the impacts.

Comment 17: One commenter indicates that the SIP erroneously indicates that the modeling results indicate that the Houston area has an impact on the Baton Rouge design value as high as 6 parts per billion (ppb). The expected impact on the design value can only be the average impact contributing to transport not the maximum value.

Another commenter said that even subtracting the State's estimate that between 2 and 6 parts per billion of ozone is being transported from Houston, the Baton Rouge area is still in nonattainment and therefore not sufficiently "affected by transport" to qualify for an extension. This commenter then went on to say that Louisiana has indicated that if the 2-6 ppb were taken into account that Baton Rouge would be in attainment, which is not correct.

Response 17: The 2-6 ppb is a range of potential influence that was estimated based on one set of meteorological conditions. The effect of the 2-6 ppb from transport indicated by the August 19, 1993, modeling impacts upon the current 1-hour design value is difficult, if not impossible, to infer. To use the average impact, as the commenter indicates, or to analyze the exact impact of transport of Houston area emissions/ozone on the Baton Rouge design value would be misleading and inappropriate. The ozone design value is driven by the 4th high value recorded at a monitor within a 3 year period. The monitored values are impacted by transport some of the time, so it is safe to conclude that the monitored values that drive the design value also are affected by transport some of the time (Please see other related responses to comments for more details on the transport discussion). To this extent the design value is impacted. The commenter is correct that the Baton Rouge area showed it needed additional local NO_x emission reductions to attain; therefore, even eliminating the transported emissions from Texas would not bring the Baton Rouge area into attainment. That the Baton Rouge area needs local emission reductions to attain, does not mean that the area is not impacted by transport from Houston or that the area does not satisfy the criteria of our attainment date extension policy.

Comment 18: Louisiana shouldn't be using the BEIS2 data to set biogenic emissions. These data are known to be incorrect. Once the BEIS2 data are used the computer model will always give the result that controlling NO_x will be preferable to controlling hydrocarbon emissions. This is an artifact of BEIS2 data and is not an accurate reflection of reality. The commenter included references to two reports and indicated that BEIS2 is inaccurate and should have not been used for the attainment demonstration. The commenter then requested that a new attainment demonstration be made using more accurate biogenics data.

Response 18: BEIS2 is the EPA-approved method for estimating biogenic emissions. Louisiana followed EPA's guidelines while applying BEIS2. At the time that LDEQ conducted the modeling, the BEIS-2 model was (and remains) the EPA-recommended model for developing biogenic emission estimates for 1-hour attainment demonstration SIP modeling. The report *Biogenic Sources Preferred Methods, May 1996*, indicates that BEIS-2 is the model recommended to be used for estimating biogenic emissions at the time the emissions were being developed for the Baton Rouge SIP modeling. Although EPA is currently developing a third version of the model (BEIS-3), it has not been given to the public for use in formal SIP modeling applications. However, in recent discussions with EPA developers, all indications are that the magnitude of the emissions will likely change very little with BEIS-3 compared to the large changes encountered between BEIS and BEIS-2. Small changes in the magnitude of biogenic emission estimates would not significantly change the overall strategy contained in the Baton Rouge area ozone SIP. BEIS-2 was also used to support the recent 1-hour ozone attainment demonstration SIP modeling for Atlanta, Georgia and Birmingham, Alabama. The two reports that the commenter lists seem to indicate some potential issues for refinement in the state-of-science of estimating biogenic emissions. The state-of-the-science continues to improve in multiple areas of ozone modeling, and the regulatory authorities have to use the best tools at the time to perform ozone modeling. It is unrealistic to require the use of modeling tools (*i.e.*, BEIS3) that become available after the modeling was initially conducted and formally submitted for approval.

Comment 19: On commenter states that Louisiana relies on computer modeling to determine that only NO_x controls, and not stationary VOC source

controls, will advance attainment in the Baton Rouge area. This position is a change from only six years ago when EPA approved Louisiana's SIP that relied on computer modeling results to avoid the very NO_x control requirements of Section 182(c), that are now being touted as the only solution. While computer modeling can be used for general conclusions on potential strategies, it should not be relied upon to release industries with controllable emissions from the requirements of 172(c)1.

Response 19: EPA disagrees with the commenter's assertion that LDEQ used computer modeling to release industries from the requirements of section 172(c)(1) of the Act. The state-of-the-science of ozone modeling, both the modeling tools and the understanding of how ozone is generated, continues to evolve. Louisiana's current SIP control strategy is a direct result of these types of improvements. Louisiana conducted numerous sensitivity runs and they showed that additional VOC controls were not very beneficial and that NO_x controls were beneficial in reducing ozone concentrations in the Baton Rouge area. Computer modeling is routinely utilized to determine if control strategies are beneficial and also to rank control strategies based on resulting decreases in ozone.

When EPA granted Louisiana NO_x exemptions under section 182(f) of the Act on January 26, 1996 (61 FR 2438), EPA reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_x emission controls. Photochemical grid modeling recently conducted for the Baton Rouge area SIP indicates control of NO_x sources will help the area attain the ozone NAAQS. Louisiana therefore requested that the EPA rescind the NO_x exemption based on this new modeling on September 24, 2001. In our proposed approval of the rescission of the NO_x waiver (May 7, 2002, 67 FR 30638), we stated that we believed that the State had adequately demonstrated that additional NO_x reductions would contribute to attainment of ozone NAAQS. Louisiana is not the only state that has requested that the EPA rescind its NO_x waiver based on updated photochemical grid modeling information. Seven years elapsed between the LDEQ's previous modeling demonstration that additional NO_x reductions would not contribute to area attainment, and the most recent modeling events demonstrating that additional NO_x reductions would help the Baton Rouge area attain. As noted above, pollution control technology,

including air modeling, is a dynamic and evolving field. The model used by LDEQ to support its request for approval of the NO_x waiver in 1996 was Urban Airshed Model (UAM) IV, which was an EPA-approved photochemical grid model. The model used by LDEQ to support its recent request for rescission of the NO_x waiver was UAM V, a more recently EPA-approved Photochemical Grid Model. This represents a significant refinement in modeling technology.

Comments From LAGen

Adverse comments on our proposed approval for the Baton Rouge SIP were also received from LAGen. The commenter supports EPA's proposal to approve the attainment demonstration, extend the attainment date and withdraw the reclassification, however, they take exception to the proposed Control Strategy Element in the SIP's Section 4.2.1., "Permitting of NO_x Sources." The commenter contends that these SIP revisions could effectively and unnecessarily result in the imposition of the equivalent of a nonattainment rule in an attainment area without first promulgating a rule to establish and implement the new requirements. The commenter also provides detailed comments concerning the SIP revisions. The following are a summary of those detailed comments and EPA's responses.

Comment 20: The commenter requests that EPA not approve Section 4.2.1 of the SIP revisions, which describes the permitting of sources of NO_x in Louisiana. Although the commenter fully supports Louisiana's newly promulgated NO_x RACT regulations, the commenter contends that Section 4.2.1 results in the imposition of nonattainment rules in an attainment area without the required opportunity for notice and comment rulemaking. The commenter argues that EPA's rules applicable to approval of SIP revisions requires public notice of such provisions and prohibits EPA from approving components of SIP revisions that were neither noticed to the public nor prepared in accordance with state law. The commenter contends that Section 4.2.1 constitutes an unlawful delegation of legislative authority under state law because LDEQ did not provide proper opportunity for public notice and comment of this section of the SIP. The commenter also contends that approval of Section 4.2.1 would impose additional and significant requirements beyond those currently required by state law and that EPA's approval of this provision is an "action concerning regulations that significantly affect

energy supply, distribution or use.” The commenter also claims that EPA’s approval of Section 4.2.1 constitutes a “significant regulatory action” and an “unfunded mandate.” Therefore, according to the commenter, EPA’s approval of Section 4.2.1 requires review by the Office of Management and Budget.

Response 20: EPA disagrees with the commenter’s characterization of Section 4.2.1 of the SIP. As noted in its plain language, Section 4.2.1 is not intended as new policy or guidance. We disagree with the commenter’s interpretation that Section 4.2.1 of Louisiana’s SIP imposes nonattainment rules in an attainment area. Section 4.2.1 provides the State’s acknowledgment of the requirements of sections 110(j) and 165(a)(3) of the Act, which prohibit the permitting of emissions from the construction or operation of sources that will cause, or contribute to, air pollution in excess of any national ambient air quality standard in any air quality control region, or any other applicable emission standard or standard of performance under the Act. Thus, Section 4.2.1 is a recitation of existing requirements under state and Federal law. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. This action is not a “significant regulatory action,” nor is it an “unfunded mandate.” Therefore EPA’s approval of the SIP, including Section 4.2.1, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

EPA also disagrees with the commenter regarding public participation. LDEQ provided notice of the SIP revisions in several area newspapers and in the Louisiana Register on October 20, 2001 (Louisiana Register, Vol. 27, No. 10). LDEQ also conducted a public hearing November 26, 2001, at which a representative from LAGen was present. Any changes made to section 4.2.1 before LDEQ submitted the SIP to EPA for approval were made in response to comments LDEQ received on its proposed SIP revisions and do not add any new requirements under state or federal law. EPA believes LDEQ properly followed the requirements under state law and under 40 CFR Part 51 in promulgating these SIP revisions. For additional information about the permitting of NO_x sources, please see EPA’s recent approval of Louisiana’s NO_x RACT regulations and revisions to

Louisiana’s nonattainment New Source Review program. For these reasons, EPA is approving the SIP as submitted.

Comment 21: LAGen indicated that it is very difficult to evaluate the UAM-V modeling in regard to emissions inputs rendering the regulated community without direct access to the inputs on a facility by facility basis prior to submission of the SIP revisions. Louisiana Generating indicated that they were not previously able to review emission values assigned to individual facilities to evaluate the inputs. Since the submission of the SIP Revisions, LAGen has been informed that the inputs, or base case inventory, included approximately 4,000 tons per year (TPY) of NO_x emissions that did not exist during the base case year and much of which may not be available for use as emission reduction credits. In addition, the model inputs included an inflated value of approximately 6,600 TPY of VOC emissions and probably the majority of these will not be creditable. The use of inflated emissions values in the modeling raises the question of whether the results support all of the control strategies and especially permitting.

In another section of its comment letter, LAGen indicated that the base year inventory used as emissions data inputs for modeling of the Baton Rouge area is believed to be considerably inflated (4,000 TPY of NO_x and 6,600 TPY of VOC) through inclusion of emissions that were eliminated in years before the modeling took place. LAGen claims that the year chosen for inclusion of facility by facility emissions data resulted in inflated emissions values. Therefore, the results of modeling exercises are overestimated and the Control Strategies chosen are based on inflated episode values rendering portions of the SIP revisions more stringent than justified by the data. As submitted to EPA, the State’s Attainment Plan/Transport SIP unnecessarily punishes primarily undeveloped parishes in the Region of Influence by limiting their economic development options through the requirement to provide offsets.

Response 21: We disagree. The State provided public notice and a hearing to receive comments on all aspects of the attainment demonstration SIP modeling, including the inventories and approaches used to develop them. As required, the State must make all of these materials available to the public upon request. Moreover, all modeling inputs as well as modeling processes used in the State attainment demonstration SIP were presented and discussed at the monthly Technical

Oversight Committee meetings, which included representatives from private industries, local citizens, State, EPA, etc. EPA understands that the State has made all model inputs available to the public for review and comment. In addition, the State instructed its modeling contractor to provide the public access to this information.

Comment 22: LAGen indicated that the inputs for the modeling include overestimated NO_x emissions and VOC emissions. LaGen further stated that these “excess” emissions will not be available for use as offsets and should not have been included in the model.

Response 22: LAGen did not provide any explanation of how the values provided were derived and what is the source of these “inflated” emissions. The basecase emission inventory inputs, as well as the meteorological inputs, were utilized to replicate historical ozone exceedance episodes. The State used emission inventories that were acquired from the LDEQ annual emission inventory submittal from the industrial facilities themselves, and various local, state, and federal agencies. As required, the State has made all these information available to the public upon request. LDEQ also utilized other sources for the SIP modeling that were developed with EPA approved emission modeling tools or techniques. Once the base case UAM-V modeling were completed, these emission inventories were then projected to a future year for the development of an emission control strategy. As outlined by EPA guidance and procedures, LDEQ’s projected emission inventories accounted for future growth and control. Specifically, LDEQ included the change in emissions due to emission offsets, emission controls, emission growth, and emission reduction credits. While the claimed 4,000 TPY of NO_x is a sizeable amount of emissions, it is only equivalent to approximately 2% of the Grid D domain total NO_x emissions on a daily basis. Sensitivity modeling runs indicated that a decrease in VOC emissions of 30% domain wide, would only result in a few ppb change. The commenter indicated that the basecase inventory was inflated by 6,600 TPY of VOC, which corresponds to approximately 1% of the Grid D domain. Therefore, if excess emissions at the levels the commenter indicated were included in this modeling, the resulting change in the domain’s ozone values would likely be in the “noise” of the model.

Comment 23: LAGen also indicated that the inflated emission inputs resulted in overestimation in the model, which resulted in more NO_x controls

than are actually needed and, therefore, LDEQ should not need to obtain offsets for "new" sources in the surrounding area.

Response 23: The commenter's conclusion is based upon the underlying premise that the model overestimates emissions, and results in an over prediction of ozone concentrations. Furthermore, the commenter's remark that the year chosen for facility emissions in the basecase modeling is not representative of today's emission levels is inaccurate. The purpose of the basecase modeling is to use an emission inventory that reflects the facility's emissions during the ozone episode being modeled (1997 and 1999), not current day (2002) emission levels. To use 2002 emission levels would not be appropriate for 1997 and 1999 episodes. The model inputs represent the best estimates that reflect actual emissions, taking into account requirements for "banked" reductions potentially available for future offsets. The modeled results demonstrated attainment for two of the three episodes and the other episode used weight of evidence. For most of the days modeled in the three episodes the modeling seemed to under predict at paired monitor vs. observed values. The "Average Accuracy of the Peak" the "Normalized Bias" metrics seem to indicate that the model was either less than 3% over or was under predicting within the Grid D domain for most of the modeled days of the three episodes (20 out of 25 days for the Average Accuracy of the Peak and 19 out of 25 days for the Normalized Bias). Both of these metrics compare monitored values with modeled values to evaluate the model performance. Model runs conducted by LDEQ clearly demonstrated the impact of large increases in "new" emissions in the area of influence. Such increases, without a one-to-one offset, clearly impacted the attainment demonstration. Furthermore, the state is free to adopt a more stringent control strategy if the state wishes (Section 116 of the CAA).

XII. What Action Is EPA Taking Regarding the State Submittals Addressed by This Final Rule?

EPA is taking the following actions on the state submittals addressed by this final rule:

1. EPA is approving the ground-level 1-hour ozone attainment demonstration SIP for the Baton Rouge, Louisiana, ozone nonattainment area.
2. EPA is approving the State's Transport Demonstration and is granting the State's request for extension, and extending the date for attaining the 1-

hour ozone standard to November 15, 2005, while retaining the area's current classification as a serious ozone nonattainment area.

3. EPA is approving the 2005 on-road MVEBs for Louisiana. EPA is also approving Louisiana's enforceable commitment to revise its 2005 MVEBs based on MOBILE6 within two years of its release. No conformity determinations will be made during the second year following the release of MOBILE6 unless and until the MVEBs have been recalculated using MOBILE6 and approved by EPA.

4. EPA is approving an enforceable TCM.

5. EPA is approving the revisions to the 1990 base year emissions inventory, the 15% ROPP, and the Post-1996 ROPP.

6. EPA finds that the Baton Rouge area meets the requirements pertaining to RACM under the Act.

7. EPA is approving Louisiana's enforceable commitment for a mid-course review.

8. EPA is withdrawing our June 24, 2002, rulemaking action entitled "Determination of Nonattainment as of November 15, 1999, and Reclassification." For the reasons stated above in the "Background" portion of this notice, EPA is making this final action immediately effective.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more

Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Ozone, Wilderness areas.

Dated: September 24, 2002

Gregg A. Cooke,
Regional Administrator, Region 6.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

2. The table in § 52.970(e) entitled “EPA Approved Louisiana Nonregulatory and Quasi-Regulatory Measures” is amended by:

- a. removing the entries for: “Revision to SIP, 15% ROP Plan;” “Post-1996 ROP Plan;” “Attainment Demonstration for the 1-Hour Ozone NAAQS;” “1999 Motor Vehicle Emissions Budgets;” and “Revised 1990 Base Year VOC Emissions Inventory” and
- b. adding entries to the end of the table.

The additions read as follows:

§ 52.970 Identification of Plan.

* * * * *
(e) * * *

EPA APPROVED LOUISIANA NONREGULATORY AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* * * * *				*
Attainment Demonstration for the 1-Hour Ozone NAAQS.	Baton Rouge, LA	12/31/2001	October 2, 2002 [67 FR 61786].	
Ozone Attainment Date Extension to 11/15/05	Baton Rouge, LA	12/31/2001	October 2, 2002 [67 FR 61786].	
2005 Motor Vehicle Emissions Budgets	Baton Rouge, LA	12/31/2001	October 2, 2002 [67 FR 61786].	
Enforceable Transportation Control Measure Appendix F.	Baton Rouge, LA	12/31/2001	October 2, 2002 [67 FR 61786].	
Enforceable commitment to perform a mid-course review and submit a SIP and revision by 05/01/04.	Baton Rouge, LA	12/31/2001	October 2, 2002 [67 FR 61786].	
Post 1996 Rate of Progress Plan Revisions	Baton Rouge, LA	12/31/2001	October 2, 2002 [67 FR 61786].	
15% Rate of Progress Plan Revisions	Baton Rouge, LA	12/31/2001	October 2, 2002 [67 FR 61786].	
1990 VOC Base Year Inventory Revisions	Baton Rouge, LA	12/31/2001	October 2, 2002 [67 FR 61786].	
Reasonable Available Control Measure Analysis	Baton Rouge, LA	12/31/2001	October 2, 2002 [67 FR 61786].	

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. The amendment to § 81.319 which published on June 24, 2002 (67 FR 42688) and were revised on August 20, 2002 (67 FR 53882) to become effective on October 4, 2002, are withdrawn. The table in § 81.319 entitled “Louisiana—

Ozone (1-Hour Standard)” is amended by revising the entry for the Baton Rouge area to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA-OZONE
[1-Hour Standard]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Baton Rouge area:				
Ascension Parish	11/15/90	Nonattainment	11/15/90	Serious.
East Baton Rouge Parish	11/15/90	Nonattainment	11/15/90	Serious.
Iberville Parish	11/15/90	Nonattainment	11/15/90	Serious.
Livingston Parish	11/15/90	Nonattainment	11/15/90	Serious.
West Baton Rouge Parish	11/15/90	Nonattainment	11/15/90	Serious.

LOUISIANA-OZONE—Continued
[1-Hour Standard]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * *				

¹ This date is October 18, 2000, unless otherwise noted.

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[FR Doc. 02-24763 Filed 10-1-02; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7383-9]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of a portion of the Department of Energy (DOE) Mound Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region V is publishing a direct final notice of deletion of Parcel 4 of the Department of Energy (DOE) Mound Superfund Site (Mound Site), located in Miamisburg, Ohio, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Ohio, through the Ohio Environmental Protection Agency (OEPA), because EPA and the OEPA have determined that the Department of Energy has implemented all appropriate response actions required with respect to Parcel 4. This deletion does not preclude future actions under Superfund or relieve DOE of their Long-Term Stewardship or Operation and Maintenance responsibilities.

DATES: This direct final notice of partial deletion will be effective December 2, 2002 unless EPA receives adverse comments by October 31, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final notice of deletion in the

Federal Register informing the public that the deletion will not take effect. **ADDRESSES:** Comments may be mailed, telephoned, or e-mailed to: Timothy Fischer, Remedial Project Manager at (312) 886-5787, *Fischer.Timothy@EPA.Gov* or Gladys Beard, State NPL Deletion Process Manager at (312) 886-7254, *Beard.Gladys@EPA.Gov*, Superfund Division, U.S. EPA Region, 5, 77 W. Jackson Blvd. (SR-6J), Chicago, IL 60604.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: EPA Region V Library, 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 353-5821, Monday through Friday 8 a.m. to 4 p.m.; The CERCLA Public Reading Room, Miamisburg Senior Adult Center, 305 Central Avenue, Miamisburg, OH 45342.

FOR FURTHER INFORMATION CONTACT: Timothy Fischer, Remedial Project Manager at (312) 886-5787, *Fischer.Timothy@EPA.GOV* or Gladys Beard, State NPL Deletion Process Manager at (312) 886-7253, *Beard.Gladys@EPA.Gov* or 1-800-621-8431, EPA Region V, 77 W. Jackson Boulevard, Mail Code SR-6J, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Partial Site Deletion
- V. Deletion Action

I. Introduction

EPA Region V is publishing this direct final notice of deletion of a portion of the Department of Energy Mound Superfund Site (Mound Site), from the NPL.

EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective December 2, 2002 unless EPA receives adverse comments by November 1, 2002 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses Parcel 4 of the DOE Mound Superfund Site and demonstrates how a portion of the Site meets the deletion criteria. Section V discusses EPA's action to delete a portion of the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site or portions of a site are deleted from the NPL, where hazardous