

this proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The regulation is procedural and has no impact on any entity unless that entity chooses to participate, in which case, the cost to the participant is the same cost for any size participant; (2) access to NVLAP's accreditation system is not conditional upon the size of a laboratory or membership of any association or group, nor are there undue financial conditions to restrict participation; and (3) the technical criteria, against which individual laboratories are assessed, are not changed by this proposal.

Paperwork Reduction Act

This proposed rule does not involve a new collection of information subject to the Paperwork Reduction Act (PRA). The collection of information for NVLAP has been approved by the Office of Management and Budget (OMB) under control number 0693-0003. Notwithstanding any other provision of the law, no person is required to comply, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act

This proposed rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 285

Accreditation, Business and industry, Calibration, Commerce, Conformity assessment, Laboratories, Measurement standards, Testing.

For the reasons set forth in the preamble, it is proposed that title 15 of the Code of Federal Regulations be amended as follows:

PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

1. The authority citation for 15 CFR part 285 continues to read as follows:

Authority: 15 U.S.C. 272 *et seq.*

2. Section 285.4 is amended by revising the last sentence to read as follows:

§ 285.4 Establishment of laboratory accreditation programs (LAPs) within NVLAP.

* * * * *

For requests from private sector entities and Government agencies, the Chief of NVLAP shall analyze each request, and, after consultation with interested parties through public workshops or other means to ensure open participation, shall establish the requested LAP, if the Chief of NVLAP determines there is need for the requested LAP.

Dated: March 21, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

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BILLING CODE 3510-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2010-0404; FRL-9287-4]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Determination of Termination of Section 185 Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the State of Louisiana is no longer required to submit a section 185 fee program State Implementation Plan (SIP) revision for the Baton Rouge ozone nonattainment area to satisfy anti-backsliding requirements for the 1-hour ozone standard. This proposed determination ("Termination Determination") is based on complete, quality-assured monitoring data showing attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS), which is due to permanent and enforceable emission reductions implemented in the area.

DATES: Written comments must be received on or before April 28, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2010-0404, by one of the following methods:

Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

U.S. EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6coment.htm>. Please click on "6PD"(Multimedia) and select "Air" before submitting comments.

E-mail: Mr. Guy Donaldson at donaldson.guy@epa.gov. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Fax: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

Mail: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Hand or Courier Delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2010-0404.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail that you consider to be CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is

not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Rennie, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7367, fax (214) 665-7263, e-mail address rennie.Sandra@epa.gov

SUPPLEMENTARY INFORMATION:

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

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What action is EPA taking?
- II. Background
- III. What is the legal rationale for this action?
- IV. What is the effect of this action?
- V. What is EPA’s analysis?
 - a. Attainment of the 1-Hour Ozone Standard
 - b. Permanent and Enforceable Emission Reductions
- VI. Proposed Action
- VII. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is proposing to determine that Louisiana is no longer required to submit a Clean Air Act section 185 fee program SIP revision for the Baton Rouge 1-hour ozone nonattainment area to satisfy anti-backsliding requirements associated with the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard. This proposed Termination Determination is based on EPA’s belief that the area is attaining the 1-hour ozone standard due to

permanent and enforceable emission reductions implemented in the area. If finalized, the effect of EPA’s determination would be to terminate the area’s obligation to submit a section 185 fee program SIP revision for the 1-hour ozone standard.

II. Background

In 2003, EPA determined that the Baton Rouge 1-hour ozone nonattainment area had failed to meet its 1-hour ozone serious area nonattainment date, and consequently the area was reclassified as a matter of law to severe nonattainment of the 1-hour ozone standard effective June 23, 2003. 68 FR 20077 (April 24, 2003). The reclassification of the area as severe required the State to adopt a SIP revision creating a penalty fee program under CAA section 185 that would apply if the area failed to meet the November 15, 2005 attainment date that applied to severe 1-hour ozone areas. But, by that date, EPA had revoked the 1-hour standard and designated the Baton Rouge area for the new 1997 8-hour standard as marginal nonattainment.

Section 185 1-Hour Ozone Anti-backsliding Requirements:

Although EPA revoked the 1-hour standard on June 15, 2004, during the transition from the 1-hour ozone to the 8-hour ozone standard, EPA required 1-hour nonattainment areas to remain subject to certain requirements pertaining to the area’s previous 1-hour classification.

The section 185 fee program requirement applied to any ozone nonattainment area classified as Severe or Extreme under the NAAQS, including any area that was classified Severe or Extreme under the 1-hour ozone NAAQS as of the effective date of the area’s 8-hour designation. Initially, in our rules to address the transition from the 1-hour to the 8-hour ozone standard, we did not include the 185 fee penalty requirement as one of the measures necessary to meet anti-backsliding requirements.¹ However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion determining that EPA improperly removed from its anti-backsliding requirements the application of the section 185 fee provision for Severe and Extreme nonattainment areas that failed to attain the 1-hour ozone standard by their attainment date. *South Coast Air Quality Management District v. EPA*,

¹ Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

472 F.3d 882 (DC Cir. 2006). In light of the Court’s decision, on January 5, 2010 EPA issued guidance on the application of the 185 1-hour anti-backsliding requirement. EPA’s guidance addressed, among other matters, alternative methods of satisfying the section 185 1-hour anti-backsliding requirement, and the circumstances under which EPA would determine that the obligation was terminated.

After the 1-hour standard was revoked, and in accordance with anti-backsliding regulations that remained unchallenged, EPA no longer reclassified areas under section 181(b) for the 1-hour standard or redesignated 1-hour nonattainment areas to attainment for that standard 69 FR 23951 (April 30, 2004). EPA continued, however to make determinations of attainment for the 1-hour standard under EPA’s Clean Data Policy. On February 10, 2010 (75 FR 6570), EPA determined, pursuant to the Clean Data Policy, that the Baton Rouge area had attained the 1-hour ozone standard.² This determination suspended certain attainment-related severe area 1-hour ozone planning requirements for Baton Rouge, but did not affect the area’s anti-backsliding obligation under the 1-hour ozone section 185 fee requirement.

III. What is the legal rationale for this action?³

As a result of the court decision in *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (DC Cir. 2006), States with areas classified as Severe or Extreme nonattainment for the 1-hour ozone standard at the time of the area’s initial nonattainment designation for the 1997 8-hour standard are no longer categorically exempt from anti-backsliding requirements under section 185. As set forth in EPA’s January 5, 2010 guidance⁴, EPA believes that States can meet this obligation through a SIP revision containing either the fee program prescribed in section 185, or an equivalent alternative program, as further explained below. EPA believes that an alternative program may be acceptable if it is consistent with the principles of section 172(e) of the CAA, which allows EPA through rulemaking to accept alternative programs that are “not less stringent” where EPA has

² May 10, 1995, EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard.”

³ Stephen D. Page, Director, Office of Air Quality Planning and Standards, Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-Hour Ozone NAAQS. January 5, 2010.

⁴ *Ibid.*

revised the NAAQS to make it less stringent.

Section 172(e) is an anti-backsliding provision of the CAA that requires EPA to develop regulations to ensure that controls are “not less stringent” than those that applied prior to relaxing a standard where EPA has revised a NAAQS to make it less stringent. In the Phase 1 ozone implementation rule for the 1997 ozone NAAQS published on April 30, 2004 (69 FR 23951), EPA determined that although section 172(e) does not directly apply where EPA has strengthened the NAAQS, as it did in 1997, it was reasonable to apply the same principle for the transition from the 1-hour NAAQS to the 1997 8-hour NAAQS. As part of applying the principle in section 172(e) for purposes of the transition from the 1-hour standard to the 1997 8-hour standard, EPA can either require States to retain programs that applied for purposes of the 1-hour standard, or alternatively can allow States flexibility to adopt alternative programs, but only if such alternatives are determined through rulemaking to be “not less stringent” than the mandated program.

EPA is electing to consider alternative programs to satisfy the section 185 fee program SIP revision requirement. States choosing to adopt an alternative program to the section 185 fee program must demonstrate that the alternative program is no less stringent than the otherwise applicable section 185 fee program and EPA must approve such demonstration after notice and comment rulemaking.

As set forth in EPA’s January 5, 2010 guidance, EPA believes that for an area that we determine is attaining either the 1-hour ozone or 1997 8-hour ozone NAAQS, based on permanent and enforceable emissions reductions, the area would no longer be obligated to submit a fee program SIP revision to satisfy the anti-backsliding requirements associated with the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard. In such cases, an area’s existing SIP could be considered an adequate alternative program. Our reasoning follows from the fact that an area’s existing SIP measures, in conjunction with other enforceable Federal measures, are adequate for the area to achieve attainment, which is the purpose of the section 185 program. The section 185 fee program is an element of an area’s attainment demonstration, and its object is to bring about attainment after a failure of an area to attain by its attainment date. Thus, areas that have attained the 1-hour ozone standard, the standard for which the fee program was originally required, as a result of

permanent and enforceable emission reductions, would have a SIP that is not less stringent than the SIP required under section 185. Therefore, EPA concludes that the obligation to collect fees terminates once EPA determines that the area has attained the 1-hour ozone standard based on permanent and enforceable emissions reductions.

In addition, EPA’s guidance states that once an area attains the 1997 8-hour ozone standard, which replaced the now revoked 1-hour ozone standard, the purpose of retaining the section 185 fee program as an anti-backsliding measure would also be fulfilled as the area would have attained the 8-hour ozone standard for which the fee program was retained as a transition measure. We believe that it would unfairly penalize sources in these areas to require that fees be paid after an area has attained the 8-hour ozone standard due to permanent and enforceable emission reductions because the fees were imposed due to a failure to meet the applicable attainment deadline for the revoked 1-hour ozone standard, not any failure to achieve the now applicable 8-hour ozone standard for which the fee program was retained as a transition matter by its attainment date.⁵

There is also an additional, independent basis for EPA’s approach to determining that the anti-backsliding requirements associated with section 185 have been satisfied. Although section 185 provides that fees are to continue until the area is redesignated for ozone, EPA no longer promulgates redesignations for the 1-hour ozone standard because that standard has been revoked. Therefore, relief from the 1-hour section 185 fee program requirement under the terms of the statute is an impossibility, since the conditions the statute envisioned for relieving an area of its fee program obligation no longer can exist. There is thus a gap in the statute which must be filled by EPA. We believe that under these circumstances we must exercise our discretion under *Chevron USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), to fill this gap, so as to carry out Congressional intent in the unique context of anti-backsliding requirements for a revoked standard. We believe that it is reasonable for the fee program obligation that applies for

⁵ EPA notes that it has also finalized a determination that the Baton Rouge area has attained the 8-hour ozone standard. (75 FR 54778, September 9, 2010). A final determination of 8-hour attainment based on permanent and enforceable emissions reductions could provide another ground for termination of the section 185 1-hour anti-backsliding requirements, but we have not yet made such a determination and thus do not rely on it here.

purposes of anti-backsliding to cease upon a determination, based on notice-and-comment rulemaking, that an area has attained the 1-hour ozone standard due to permanent and enforceable measures. This determination centers on the core criteria for redesignations under CAA section 107(d)(3). We believe these criteria provide reasonable assurance that the purpose of the 1-hour anti-backsliding fee program obligation has been fulfilled in the context of a regulatory regime where the area remains subject to other applicable 1-hour anti-backsliding and 8-hour measures. Under these circumstances, retention of the fee program under the anti-backsliding rule is no longer necessary for the purpose of achieving attainment of the 8-hour standard. See EPA’s January 5, 2010 guidance. (Footnote 3).

IV. What is the effect of this action?

If this proposed determination to terminate the section 185 fee anti-backsliding requirement for the 1-hour ozone standard is finalized, the requirement for the State of Louisiana to submit a 185 penalty fee program SIP revision, which would require major stationary sources under the Baton Rouge 1-hour severe nonattainment classification to pay fees as a penalty for a failure to attain the 1-hour ozone standard by the area’s 1-hour ozone attainment date, would be removed. A final approval of the Termination Determination for the 1-hour standard section 185 measures will not be rescinded based on subsequent nonattainment for the 1-hour ozone standard. After EPA has determined that an area has attained the 1-hour standard due to permanent and enforceable emission reductions, EPA believes that it would be unduly punitive, confusing, and potentially destabilizing to re-impose the years-old penalty requirements if at some point in the future the area lapses back into 1-hour nonattainment. Moreover, EPA believes that under current circumstances, it would not be in keeping with the intent of Congress. First, we note that had the area attained the 1-hour ozone standard prior to its attainment date, no penalties at all would have been imposed even if the area subsequently lapsed into nonattainment. Second, the statute provides that penalties for failure to attain by an area’s attainment date would be terminated by redesignation of the area. Now that the 1-hour ozone standard has been revoked and EPA is no longer promulgating redesignations for that standard, relief from the 1-hour section 185 fee program requirements

under the terms of the statute is an impossibility—the mechanism the statute envisioned for relief no longer exists. As EPA explains in its January 5 guidance, we have reasonably concluded in these circumstances that a determination of attainment due to permanent and enforceable emissions reductions, along with the area's existing SIP and its continuing obligations to meet ever more stringent ozone standards, are a reasonable alternative means for terminating these unique antibacksliding penalty provisions. EPA believes that, given the gap in the statute, and the intent of Congress as expressed in quite different regulatory circumstances, it would be counterproductive and in conflict with that intent for EPA's determination to merely suspend rather than permanently terminate the 1-hour antibacksliding penalty fees. Requiring areas to remain subject to the threat of reviving stale penalty fees for an old revoked standard, when these areas and the sources subject to the penalties must now muster their resources to focus on meeting newer more stringent standards, would be at odds with the purposes of the act and in conflict with

the principle that penalty provisions should be narrowly construed. This is all more the case when the area is subject to a host of ongoing obligations for the 1997 8-hour ozone standard as well as the future anticipated new 8-hour ozone standard,⁶ and when it has already shown great improvement in meeting the 1-hour and 1997 8-hour ozone standards.

V. What is EPA's analysis?

EPA's proposed Termination Determination is based upon EPA's belief that the area is attaining the 1-hour ozone standard due to permanent and enforceable emission reductions implemented in the area. EPA has issued guidance expressing its views as to potential rationales for terminating section 185 obligations for 1-hour ozone in its January 5, 2010 guidance. This notice formally sets forth EPA's legal interpretation concerning the basis for terminating those obligations.

a. Attainment of the 1-Hour Ozone Standard

As noted above, EPA recently determined that the Baton Rouge 1-hour ozone nonattainment area attained the

1-hour ozone NAAQS. 75 FR 6570 (February 10, 2010). This determination was based on three years of complete, quality-assured and certified ambient air monitoring data that showed monitored attainment of the 1-hour ozone standard for the 2006–2009 monitoring period. EPA is proposing to determine that the area continues in attainment, based on complete, quality-assured data for 2010 and preliminary data available to date for the 2011 ozone season.

In addition, on September 9, 2010, EPA determined that the Baton Rouge 1997 8-hour ozone nonattainment area has also attained the 1997 8-hour ozone NAAQS. (75 FR 54778) This proposed determination is based on four years of complete, quality-assured and certified ambient air monitoring data that show the area monitoring attainment of the 1997 8-hour ozone standard for the 2006–2008, 2007–2009, and 2008–2010 monitoring periods. Preliminary data available to date for the 2011 ozone season are consistent with continued attainment. Table 1 shows the fourth high 8-hour ozone average concentrations and design values for monitors in the Baton Rouge area for the 2006–2010 monitoring period.⁷

TABLE 1—FOURTH HIGHEST 8-HOUR OZONE AVERAGE CONCENTRATIONS AND DESIGN VALUES (PPM) IN THE BATON ROUGE AREA ¹

| Site | 4th Highest daily max | | | | | Design values three year averages | | |
|---------------------------------------|-----------------------|-------|-------|-------|-------|--------------------------------------|-----------|-----------|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2006–2008 | 2007–2009 | 2008–2010 |
| Plaquemine (22–047–0009) | 0.083 | 0.079 | 0.076 | 0.071 | 0.074 | 0.079 | 0.075 | 0.073 |
| Carville (22–047–0012) | 0.085 | 0.086 | 0.073 | 0.076 | 0.072 | 0.081 | 0.078 | 0.073 |
| Dutchtown (22–005–0004) | 0.087 | 0.088 | 0.074 | 0.074 | 0.078 | 0.083 | 0.078 | 0.075 |
| Baker (22–033–1001) | 0.091 | 0.077 | 0.071 | 0.071 | 0.075 | 0.079 | 0.073 | 0.072 |
| LSU (22–033–0003) | 0.085 | 0.085 | 0.072 | 0.084 | 0.080 | 0.080 | 0.080 | 0.078 |
| Grosse Tete (22–047–0007) | 0.086 | 0.084 | 0.071 | 0.070 | 0.074 | 0.080 | 0.075 | 0.071 |
| Port Allen (22–121–0001) | 0.087 | 0.076 | 0.072 | 0.072 | 0.071 | 0.078 | 0.073 | 0.071 |
| Pride (22–033–0013) | 0.082 | 0.077 | 0.074 | 0.072 | 0.071 | 0.077 | 0.074 | 0.072 |
| French Settlement (22–063–0002) | 0.079 | 0.084 | 0.075 | 0.075 | 0.076 | 0.079 | 0.078 | 0.075 |
| Capitol (22–033–0009) | 0.084 | 0.074 | 0.067 | 0.076 | 0.076 | 0.075 | 0.072 | 0.073 |

¹ Unlike for the 1-hour ozone standard, design value calculations for the 1997 8-hour ozone standard are based on a rolling three-year average of the annual 4th highest values (40 CFR Part 50, Appendix I).

b. Permanent and Enforceable Emission Reductions

EPA believes that the State has demonstrated that the observed air quality improvements with respect to the 1-hour ozone standard are due to

permanent and enforceable emission reductions through the implementation of emission controls contained in the SIP and in Federal control measures.

Subsequent to the 1990 CAA amendments, Louisiana complied with the planning requirements of the CAA

for a serious 1-hour ozone nonattainment area (67 FR 61786, October 2, 2002).⁸ But because the area failed to attain that standard by the attainment date for a serious 1-hour ozone nonattainment area, in anticipation of being reclassified to

⁶ EPA anticipates announcing the reconsidered 8-hour ozone standard in July 2011.

⁷ As noted above, a final determination of attainment for the 8-hour standard that is due to permanent and enforceable emissions reductions would provide an additional basis for a

Termination Determination for Baton Rouge, but EPA has not yet made such a determination and therefore does not rely on that ground here.

⁸ A litigant challenged EPA's approval of the serious area contingency measures, but the obligation related to these measures was later

suspended by EPA's determination that the area has attained the 1-hour standard (75 FR 6570, February 10, 2010).

severe, and in response to EPA's Clean Air Interstate Rule (now vacated and remanded), additional NO_x emission reductions were achieved through the implementation of NO_x control measures for stationary sources which were adopted by the State effective on February 20, 2002, and approved by

EPA on September 27, 2002 (67 FR 60877). These rules were implemented between February 20, 2002, and May 1, 2005. The Baton Rouge area was reclassified as severe for the 1-hour ozone standard on April 24, 2003. (68 FR 20077)

The rules established emission factors (standards) for NO_x sources within the Baton Rouge nonattainment area. These revisions achieved approximately 40 TPD of additional NO_x reductions in the Baton Rouge nonattainment area. The specific standards are listed below.

| NO _x reduction measures 2002–2008 | NO _x standard |
|---|--------------------------|
| Electric Power Generating System Boilers: | |
| Coal-fired > 40 to < 80 MMBtu/hr | 0.50 lb/MMBtu. |
| Coal-fired > 80 MMBtu/hr | 0.21 lb/MMBtu. |
| No. 6 fuel oil-fired > 40 to < 80 MMBtu/hr | 0.30 lb/MMBtu. |
| No. 6 fuel oil-fired > 80 MMBtu/hr | 0.18 lb/MMBtu. |
| All others (gaseous or liquid) > 40 to < 80 MMBtu/hr | 0.20 lb/MMBtu. |
| All others (gaseous or liquid) > 80 MMBtu/hr | 0.10 lb/MMBtu. |
| Industrial Boilers > 40 to < 80 MMBtu/hr | 0.20 lb/MMBtu. |
| Industrial Boilers > 80 MMBtu/hr | 0.10 lb/MMBtu. |
| Process Heater/Furnaces: | |
| Ammonia reformers > 40 to < 80 MMBtu/hr | 0.30 lb/MMBtu. |
| Ammonia reformers > 80 MMBtu/hr | 0.23 lb/MMBtu. |
| All others > 40 to < 80 MMBtu/hr | 0.18 lb/MMBtu. |
| All others > 80 MMBtu/hr | 0.08 lb/MMBtu. |
| Stationary Gas Turbines: | |
| Peaking Service, Fuel Oil-fired > 5 to < 10 MW | 0.37 lb/MMBtu. |
| Peaking Service, Fuel Oil-fired > 10 MW | 0.30 lb/MMBtu. |
| Peaking Service, Gas-fired > 5 to < 10 MW | 0.27 lb/MMBtu. |
| Peaking Service, Gas-fired > 10 MW | 0.20 lb/MMBtu. |
| All Others > 5 to < 10 MW | 0.24 lb/MMBtu. |
| All Others > 10 MW | 0.16 lb/MMBtu. |
| Stationary Internal Combustion Engines: | |
| Lean-burn engines > 150 to < 320 Hp | 10 g/Hp-hr. |
| Lean-burn engines > 320 Hp | 4 g/Hp-hr. |
| Rich-burn engines > 150 to < 300 Hp | 2 g/Hp-hr. |
| Rich-burn engines > 300 Hp | 2 g/Hp-hr. |

In addition, Louisiana adopted and implemented emission control rules requiring existing sources of VOC to meet, at minimum, RACT. These requirements apply to sources in categories covered by Control Technology Guidelines (CTGs) and other major non-CTG sources. These rules were adopted and implemented prior to 2002. (62 FR 63658, February 2, 1998; 63 FR 47429, November 8, 1998) The Baton Rouge nonattainment area

control strategy is primarily NO_x-driven, therefore no major VOC rules have been adopted other than those required to meet updated CTGs as required by the Act.

Finally, implementation of the phased-in Federal Tier II light-duty vehicle rule was complete in 2006, with 100 percent of the vehicles manufactured for that model year meeting the more stringent standard. This would have contributed some

small additional benefit to the Baton Rouge area during the 2006–2008 monitoring period.

EPA believes that the progress made to reduce emissions in the Baton Rouge area during the 2002–2008 timeframe resulting in achieving attainment of both the 1-hour and 1997 8-hour ozone standards is from permanent and enforceable measures which achieved significant reductions as summarized in Table 2.

TABLE 2—SUMMARY OF EMISSION REDUCTIONS

| | NO _x TPD | VOC TPD |
|---|---------------------|---------|
| Adjusted Base Year (2002) Inventory | 193.3 | 103.5 |
| 2008 Emissions | 143.2 | 97.8 |

Emissions of both VOC and NO_x have been reduced during the time period leading up to December 31, 2008, the date when Baton Rouge reached attainment for the 1-hour standard, to an extent that there are currently excess emission reductions for both ozone standards. Even though the NO_x rules were fully implemented by May of 2005, the area was prevented from attaining in 2005 by the four exceedances

experienced in the 2003–2004 monitoring period.

The preceding discussion demonstrates that permanent and enforceable emission reduction measures adopted and implemented by the State have been effective in reaching attainment of both the 1-hour and 1997 8-hour ozone standards.

VI. Proposed Action

EPA is proposing to make a determination to terminate (Termination Determination) the section 185 fee penalty requirement for the Baton Rouge area for the 1-hour ozone standard. For the reasons set forth in this notice, this proposed determination is based on EPA's determination that the area has attained and continues to attain the 1-

hour ozone standard due to permanent and enforceable emissions reductions.

VII. Statutory and Executive Order Reviews

This action proposes to make a determination of termination of the CAA section 185 penalty fee requirement based on attainment of the 1-hour ozone standard due to permanent and enforceable emission reductions, and would, if finalized, result in the termination of the section 185 fee requirements for the 1-hour standard, and would not impose any additional requirements. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 19, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011-7325 Filed 3-28-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0169; FRL-9286-9]

Approval and Promulgation of Implementation Plans; Nevada; Determination of Attainment for the Clark County 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that the Clark County (Nevada) 8-hour ozone nonattainment area has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS). This proposed determination is based upon complete, quality-assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007 to 2009 monitoring period. Preliminary air quality monitoring data available for 2010 are consistent with continued attainment. Based on this proposed determination, the requirement for the State of Nevada to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for the Clark County ozone nonattainment area would be suspended for as long as the nonattainment area continues to meet the 1997 8-hour ozone NAAQS. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 28, 2011.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2011-0169, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* kelly.johnj@epa.gov.

3. *Fax:* (415) 947-3579.

4. *Mail:* “EPA-R09-OAR-2011-0169,” Lisa Hanf, Chief, Air Planning Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street (Air-2), San Francisco, California 94105.

5. *Hand Delivery or Courier:* At the previously-listed EPA Region IX address. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: John Kelly, (415) 947-4151, or by e-mail at kelly.johnj@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the attainment determination and related suspension of attainment planning-related SIP submittal requirements as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the determination and suspension of attainment-related SIP submittal requirements is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 15, 2011.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2011-7222 Filed 3-28-11; 8:45 am]

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