

of the Act, HUD's primary single-family mortgage insurance program.

Accordingly, for the above reasons, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

#### *Environmental Impact*

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### *Catalogue of Federal Domestic Assistance*

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

#### **List of Subjects in 24 CFR Part 203**

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 203 to read as follows:

#### **PART 203—SINGLE FAMILY MORTGAGE INSURANCE**

1. The authority citation for part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

#### **§ 203.43e [Removed]**

2. Remove § 203.43e.

Dated: August 24, 2011.

**Carol J. Galante,**

*Acting Assistant Secretary for Housing—  
Federal Housing Commissioner.*

[FR Doc. 2011–22189 Filed 8–29–11; 8:45 am]

**BILLING CODE 4210–67–P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Parts 52 and 81**

**[EPA–R06–OAR–2010–0776; FRL–9456–7]**

#### **Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Louisiana; Baton Rouge Ozone Nonattainment Area; Redesignation to Attainment for the 1997 8-Hour Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a request from the State of Louisiana to redesignate the Baton Rouge, Louisiana moderate 1997 8-hour ozone nonattainment area to attainment of the 1997 8-hour ozone standard. In proposing to approve this request, EPA also proposes to approve as a revision to the Louisiana State Implementation Plan (SIP), a 1997 8-hour ozone maintenance plan with a 2022 Motor Vehicle Emissions Budget (MVEB) for the Baton Rouge Nonattainment Area (BRNA or BR). EPA is also proposing to approve revisions to the Louisiana SIP that meets the Reasonably Available Control Technology (RACT) requirements (for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs)) for the 1-hour and 1997 8-hour ozone

standard requirements, and to approve a state rule establishing a maintenance plan contingency measure. In prior, separate rulemaking actions, EPA finalized its action to terminate the 1-hour ozone anti-backsliding section 185 penalty fee requirement. EPA has proposed to approve the Control Technique Guideline Rules (CTG Rules Update) that are necessary for redesignation. We are proposing that if the CTG Rules Update is finalized, the area will have a fully approved SIP that meets all of its applicable 1997 8-hour requirements and 1-hour anti-backsliding requirements under section 110 and Part D of the Federal Clean Air Act (CAA or Act) for purposes of redesignation.

**DATES:** Comments must be received on or before September 29, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R06–OAR–2010–0776, 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/r6comment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- *E-mail:* Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto: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–2010–0776. 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 whose disclosure is restricted by statute.

Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*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.

The State submittal, which is part of the EPA record, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, LA 70802.

**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 number 214-665-7263; e-mail address [rennie.sandra@epa.gov](mailto:rennie.sandra@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," and "our" means EPA.

### Table of Contents

- I. What are the actions EPA is proposing?
  - II. What is the background for these actions?
    - A. What are the National Ambient Air Quality Standards?
    - B. What is ozone and why do we regulate it?
    - C. What is the background for the Baton Rouge area under the 1-hour ozone NAAQS?
    - D. What is the background for the BRNA under the 1997 8-hour ozone NAAQS?
  - III. What are the impacts of the court decisions on EPA's phase 1 and 2 implementation rules upon the BRNA redesignation request?
    - A. Summary of the Court Decisions
    - B. Summary of EPA's Analysis of the Impact of the Court Decisions on the BRNA Area
      - 1. Requirements under the 1997 Eight-Hour Ozone Standard
      - 2. Requirements under the One-Hour Ozone Standard
  - IV. What are the CAA criteria for redesignation?
  - V. What is EPA's analysis of the state's redesignation request and maintenance plan and what is the basis for EPA's proposed actions?
    - A. Has the BRNA attained the ozone NAAQS?
      - 1. Attainment of the 8-Hour NAAQS
      - 2. Attainment of the 1-Hour NAAQS
    - B. Has the state of Louisiana met all applicable requirements of section 110 and part D of the CAA and does the BRNA have a fully approved SIP under section 110(k) of the CAA for purposes of redesignation to attainment?
      - 1. The BRNA Has Met All Requirements of Section 110 and Part D of the CAA Applicable for Purposes of Redesignation for the 8-Hour NAAQS
        - a. Section 110 and General SIP Requirements
        - b. Part D SIP Requirements
          - (i) *Has the BRNA met the part D nonattainment requirements under the 1-hour ozone standard?*
          - (ii) *South Coast Anti-Backsliding Measures*
          - (iii) *Part D SIP Requirements Under 1997 8-Hour Standard: Part D, subpart 2 applicable SIP requirements*
          - (iv) *Section 176 Conformity Requirements*
          - (v) *NSR Requirements*
          - (vi) *Section 182(a)(1) Inventory Requirements*
- VI. What is EPA's evaluation of the BR area's motor vehicle emissions budgets?
  - A. What are the transportation requirements for approvable MVEBs?
  - B. What is the status of EPA's adequacy determination?
  - C. Is the MVEB approvable?
- VII. What are EPA's proposed actions?
- VIII. Statutory and Executive Order Reviews
- I. What are the actions EPA is proposing?**
- EPA is proposing to take several related actions pursuant to the Act for the BRNA moderate 1997 8-hour ozone nonattainment area, consisting of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes in Louisiana. EPA is proposing to find that the BRNA has met the requirements for redesignation under section 107(d)(3)(E) of the Act, and is therefore proposing to approve a request from the State of Louisiana to redesignate the BRNA to attainment of the 1997 8-hour ozone standard. EPA is also proposing to approve, pursuant to section 175A of the Act, the area's 1997 8-hour ozone maintenance plan as a revision to the Louisiana SIP; to approve the plan's associated 2022 MVEB; to approve additional submissions to meet applicable VOC and NO<sub>x</sub> RACT requirements; and to approve a State Rule revision that establishes a

- 2. The BRNA Has a Fully Approved SIP Under Section 110(k) of the CAA
- C. Are the air quality improvements in the BRNA nonattainment area due to permanent and enforceable emission reductions resulting from the implementation of state and federal regulations and other permanent and enforceable emission reductions?
  - 1. Emissions Reductions as Shown by Emissions Inventory Data
  - 2. Impact of Emissions Controls Implementation: Trend Analysis
  - 3. Permanent and Enforceable Emissions Controls Implemented
    - a. Reasonably Available Control Techniques
    - b. ROP Plans and Attainment Demonstration Plan
    - c. NO<sub>x</sub> Control Rules
    - d. Federal Emission Control Measures
  - D. Does the BRNA have a fully approvable maintenance plan pursuant to section 175A of the CAA?
    - 1. What is required in an ozone maintenance plan?
    - 2. What is the attainment inventory for the BRNA?
    - 3. Has the state of Louisiana committed to maintain the ozone monitoring system in the BRNA?
    - 4. Has the state demonstrated maintenance in the BRNA?
    - 5. What is the contingency plan for the BRNA?
      - a. Verification of Continued Attainment
      - b. Contingency Plan
      - c. Controls to Remain In Effect

contingency measure for the maintenance plan. In a separate rulemaking, EPA has finalized an action to terminate CAA section 185 penalty fee requirements for the 1-hour ozone standard. (July 7, 2011, 76 FR 39775). EPA is proposing to find that the BR area will satisfy all moderate area requirements for the 1997 8-hour ozone NAAQS and severe area 1-hour ozone anti-backsliding requirements applicable for purposes of the area's redesignation for the 1997 8-hour ozone standard once the CTG Rule Update is finalized. A fuller discussion of how the BRNA met these requirements is discussed in detail later in this document. The Technical Support Document (TSD), for this action also provides further information on how the BRNA area satisfies the 8-hour moderate area requirements and 1-hour severe area requirements for anti-backsliding purposes.

Based upon the above, EPA is proposing to approve the State of Louisiana's request, submitted on August 31, 2010, and supplemented on February 14, 2011, through the Louisiana Department of Environmental Quality (LDEQ), to redesignate the BRNA to attainment of the 1997 8-hour ozone standard.

## II. What is the background for these actions?

### A. What are the National Ambient Air Quality Standards?

Section 109 of the Act requires EPA to establish NAAQS for pollutants that "may reasonably be anticipated to endanger public health and welfare," and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities. A State's SIP addresses these requirements, as required by section 110 and other provisions of the Act. The SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS.

### B. What is ozone and why do we regulate it?

Ozone, a gas composed of three oxygen atoms, at the ground level is generally not emitted directly by sources such as from a vehicle's exhaust or an industrial smokestack; rather, ground level ozone is produced by a chemical reaction between nitrogen oxides (NO<sub>x</sub>) and VOCs in the presence of sunlight and high ambient temperatures. NO<sub>x</sub> and VOCs are referred to as precursors of ozone. Motor vehicle exhaust and industrial emissions, gasoline vapors, and chemical solvents all contain NO<sub>x</sub> and VOCs. Urban areas tend to have high concentrations of ground-level ozone, but areas without significant industrial activity and with relatively low vehicular traffic are also subject to increased ozone levels because wind carries ozone and its precursors many miles from the sources. The Act establishes a process for air quality management through the NAAQS.

Repeated exposure to ozone pollution may cause lung damage. Even at very low concentrations, ground-level ozone triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis. It can also have detrimental effects on plants and ecosystems.

### C. What is the background for the Baton Rouge area under the 1-hour ozone NAAQS?

EPA first designated the Baton Rouge area as an ozone nonattainment area in 1978. 43 FR 8964, 8998 (March 3, 1978). The BR 1-hour ozone nonattainment area contains five parishes: East Baton Rouge; West Baton Rouge; Ascension; Iberville; and Livingston Parishes (40 CFR 81.319). In 1991, the BR area was designated nonattainment by operation of law and EPA classified the BR area as a "serious" ozone nonattainment area with a statutory attainment deadline of November 15, 1999. 56 FR 56694 (November 6, 1991). EPA approved the serious attainment demonstration SIP and its associated elements, e.g., attainment Motor Vehicle Emissions Budgets (MVEB), the Reasonably Available Control Measures (RACM) demonstration, on July 2, 1999. See 64 FR 35930. The BR area, however, did not attain by the serious area statutory deadline of November 15, 1999. Before this deadline however, EPA had issued a guidance memorandum that allowed an area to retain its existing classification and receive a later attainment deadline if the EPA found

that area met all of its existing classification requirements, approved a demonstration that the area would attain but for the transport from another area, and approved the attainment demonstration SIP with its associated elements. See EPA's "Guidance on Extension of Attainment Dates for Downwind Transport Areas" (the Extension Policy) (Richard D. Wilson, Acting Assistant Administrator for Air and Radiation) July 16, 1998. On October 2, 2002, EPA approved the revised attainment demonstration SIP and its associated elements, found the area met all of the serious area requirements, found there was transport from Texas affecting the BR area reaching attainment, and extended the attainment date for the BR area to November 15, 2005, without reclassifying the area from serious to severe, consistent with the policy. 67 FR 61786 (October 2, 2002).

On December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit vacated EPA's attainment date extension policy, which had been applied to extend the 1-hour ozone attainment deadline for the Baton Rouge area without reclassifying the area. *Sierra Club v. EPA*, 314 F.3d 735 (5th Cir. 2002). Thereupon EPA on April 24, 2003, withdrew the action extending the attainment deadline for Baton Rouge, finalized its finding that the area failed to attain the 1-hour ozone standard by the serious area deadline, and reclassified the Baton Rouge area by operation of law, to severe nonattainment for the 1-hour ozone standard. See 68 FR 20077.<sup>1</sup> As a result of its reclassification to severe, the State was required, among other things, to submit by June 23, 2004, a new 1-hour severe attainment demonstration SIP with an attainment date of November 15, 2005, with a 25 ton per year major stationary source threshold, additional reasonably available control technology (RACT) rules for sources subject to the new lower major stationary source

<sup>1</sup> Petitions for review of the October 2, 2002, rulemaking were filed in the U.S. Court of Appeals for the Fifth Circuit (*Louisiana Environmental Action Network (LEAN) v. EPA*, No. 02-60991). The issues raised concerned EPA's decision to approve Louisiana's substitute contingency measures plan, the revised attainment demonstration SIP with a later attainment deadline without reclassifying the area to severe, and the associated precursor trading provision of the NSR rules. On February 25, 2003, the court granted EPA's partial voluntary remand to allow EPA the time to meet the December 2002 court decision by withdrawing its approval of the revised attainment demonstration SIP that extended the attainment deadline without reclassifying the area and the associated NSR precursor trading provision. The court also addressed the substitute contingency measures claim, and vacated and remanded EPA's approval of the contingency measures.

threshold, a new source review (NSR) offset requirement of at least 1.3 to 1, a rate of progress in emission reductions of ozone precursors of at least 3 percent of baseline emissions per year from November 15, 1999, until the attainment year, additional transportation control measures (TCMs) needed to offset growth in emissions due to growth in vehicle miles traveled (VMT), and a fee requirement for major stationary sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) should the area fail to attain by 2005. The state was required to implement the EPA-triggered failure-to-attain contingency measures, submit a replacement for, *i.e.*, backfill for, the triggered failure-to-attain contingency measures, and to meet the remaining severe area requirements under section 182(d) of the Act. The State submitted severe area rules that addressed the 25 tpy and major source offset requirements,<sup>2</sup> a VMT offset analysis, and a substitute contingency measure to replace the serious area contingency measure that was previously approved into the serious area attainment demonstration.

Upon reclassification to severe, under section 211(k) of the Act, the use of reformulated gasoline (RFG) was to be required in the BRNA one year after the effective date of the reclassification. The Louisiana Department of Environmental Quality, the City of Baton Rouge, and the Chamber of Greater Baton Rouge all formally requested a waiver and/or delay of implementation of the RFG requirement in the Baton Rouge severe ozone nonattainment area. EPA denied these requests. The City and the Chamber filed a Petition for Review in the U.S. Court of Appeals for the Fifth Circuit. The parties filed a joint motion for a voluntary remand to EPA to allow it to reconsider its decision in light of new information. On August 2, 2004, the Fifth Circuit Court of Appeals approved the joint motion, remanding the matter to EPA and staying the litigation and enforcement of the RFG requirement for the BRNA during the remand. The Court's stay of enforcement of the RFG requirement in the BRNA currently remains in effect.

On February 10, 2010 EPA determined that the BRNA area was attaining the 1-hour ozone standard based on quality-assured, certified data for the 2006–2008 ozone monitoring seasons. This determination suspended the 1-hour attainment demonstration requirement, 1-hour rate of progress requirement, the 1-hour contingency measures, and other SIP planning

requirements related to attainment of the 1-hour ozone NAAQS. See 75 FR 6570. Lastly, on July 7, 2011, EPA finalized its action to terminate the CAA section 185 penalty fee requirements for the Baton Rouge 1-hour ozone standard. For a more detailed rationale, see our proposed and final actions at 76 FR 17368 and 76 FR 39775.

#### *D. What is the background for the BRNA under the 1997 8-hour ozone NAAQS?*

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm), which is more protective than the previous 1-hour ozone standard (62 FR 38855).<sup>3</sup> The EPA published the 1997 8-hour ozone designations and classifications on April 30, 2004 (69 FR 23858). The BRNA was designated nonattainment and initially classified as marginal. The area includes five parishes (counties): Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge (these constitute the former 1-hour ozone nonattainment area). The effective date of designation for the 1997 8-hour ozone NAAQS was June 15, 2004. Under the marginal nonattainment designation, the latest attainment date for the BRNA was June 15, 2007. The BRNA did not monitor attainment of the 1997 8-hour ozone NAAQS by the June 15, 2007 deadline, based upon complete, quality-assured and certified ambient air quality monitoring data for the 2004–2006 ozone seasons.

Therefore, EPA determined that the BRNA had failed to attain the 1997 8-hour ozone standard by the applicable attainment deadline and the area was reclassified by operation of law as a moderate 1997 8-hour ozone nonattainment area, effective April 21, 2008 (73 FR 15087). This determination was based on ambient air quality data from the 2004–2006 monitoring period. In a subsequent rulemaking (September 9, 2010, 75 FR 54778) EPA determined that (based on monitoring data for 2006–2009 monitoring periods and preliminary 2010 data) the BRNA has since attained the 1997 8-hour ozone standard. Recent certified air quality data for 2010 indicate that the BRNA

<sup>3</sup> On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. On January 6, 2010, EPA proposed to set the level of the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. EPA anticipates that by August 2011 it will have completed reconsideration of the standard and thereafter will proceed with designations. The actions addressed in today's proposed rulemaking relate only to redesignation for the 1997 8-hour ozone standard. EPA's actions with respect to this new standard do not affect EPA's action here.

continues to attain the 1997 8-hour ozone standard. See Section V.A.

The deadline for submission of requirements to meet the area's new 8-hour moderate nonattainment area classification was January 1, 2009 (73 FR 14391). The LDEQ, on December 14, 2009, submitted a request that EPA determine that the BRNA was monitoring attainment for the 1997 8-hour ozone standard. As stated earlier, EPA finalized a determination of attainment on September 9, 2010. This determination suspended the requirement for a 1997 8-hour attainment demonstration, 8-hour rate of progress plan and 8-hour contingency measures. (See 75 FR 54778). On August 31, 2010, the state submitted a request for redesignation to attainment. As stated previously, the request included a maintenance plan with associated MVEB.

### **III. What are the impacts of the court decisions on EPA's phase 1 and 2 implementation rules upon the BRNA redesignation request?**

#### *A. Summary of the Court Decisions*

The following sets forth EPA's views on the effect of the U.S. Court of Appeals for the District of Columbia rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, June 8, 2007, and July 10, 2009, decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

EPA published a first phase rule governing implementation of the 1997 8-hour ozone standard (Phase 1 Rule) on April 30, 2004 (69 FR 23951). The Phase 1 Rule addresses classifications for the 1997 8-hour NAAQS and for revocation for the 1-hour NAAQS; how anti-backsliding principles will ensure continued progress toward attainment of the 1997 8-hour NAAQS; attainment dates; and the timing of emissions reductions needed for attainment. The Phase 1 Rule revoked the 1-hour ozone standard. The Phase 1 Rule also provided that 1-hour ozone nonattainment areas are required to adopt and implement "applicable requirements" according to the area's classification under the 1-hour ozone

<sup>2</sup> However, the State subsequently reversed these rules when the 1-hour ozone standard was revoked.

standard for anti-backsliding purposes. See 40 CFR 51.905(a)(i). On May 26, 2005, we determined that an area's 1-hour designation and classification as of June 15, 2004 would dictate what 1-hour obligations remain as "applicable requirements" under the Phase 1 Rule. 40 CFR 51.900(f). (70 FR 30592). As discussed previously, the Baton Rouge area's classification under the 1-hour standard as of June 15, 2004 was "severe."

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia vacated EPA's Phase 1 Rule in *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the Court clarified that the Phase 1 rule was vacated only with regard to those parts of the rule that had been successfully challenged. See 489 F.3d 1245 (D.C. Cir. 2007), cert. denied, 128 S.Ct. 1065 (2008). By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 rule that had not been successfully challenged. The June 8, 2007 opinion reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area new source review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas that fail to attain the 1-hour standard by the 1-hour attainment date; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS or for failure to attain that NAAQS; and (4) the court clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

EPA published a second rule governing implementation of the 1997 8-hour ozone standard (Phase 2 Rule) on November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727). The Phase 2 Rule addressed, among other things, the Clean Data Policy as codified in 40 CFR 51.918. The Court upheld the Clean Data Policy, agreeing with the Tenth Circuit that EPA's interpretation of the Act was reasonable. *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009). See *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996).

#### *B. Summary of EPA's Analysis of the Impact of the Court Decisions on the BRNA Area*

##### 1. Requirements under the 1997 Eight-Hour Ozone Standard

For the 1997 8-hour ozone standard, the BRNA ozone nonattainment area was originally classified as marginal nonattainment under subpart 2 of the CAA and reclassified to moderate on March 21, 2008 (73 FR 15087). The June 8, 2007, opinion clarifies that the Court did not vacate the Phase 1 Rule's provisions with respect to classifications for areas under subpart 2. The Court's decision, therefore, upholds EPA's classifications for those areas classified under subpart 2 for the eight-hour ozone standard, and all eight-hour ozone requirements for these areas remain in place.

##### 2. Requirements Under the One-Hour Ozone Standard

In its June 8, 2007, decision, the Court limited its vacatur so as to uphold those provisions of EPA's anti-backsliding requirements that were not successfully challenged. Therefore, an area must meet the anti-backsliding requirements, see 40 CFR 51.900, *et seq.*; 70 FR 30592, 30604 (May 26, 2005), which apply by virtue of the area's classification for the one-hour ozone NAAQS. As set forth in more detail below, the area must also address several additional anti-backsliding provisions identified by the Court in its decisions. We address later on in this notice how the 1-hour anti-backsliding obligations (as interpreted and directed by the court) are met in the context of a redesignation action for the 1997 8-hour NAAQS.

#### **IV. What are the CAA criteria for redesignation?**

The Act sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, CAA section 107(d)(3)(E) allows for redesignation provided that (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the State

containing such area has met all requirements applicable to the area under CAA section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, June 18, 1990.
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment", Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas", Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992", Memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for

Air and Radiation, October 14, 1994; and

10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

**V. What is EPA's analysis of the state's redesignation request and maintenance plan and what is the basis for EPA's proposed actions?**

**A. Has the BRNA attained the ozone NAAQS?**

EPA has previously determined that that the BRNA ozone nonattainment area has attained both the 1- hour and 1997 8-hour ozone standards. As set forth below, data available subsequent to those determinations shows that the area continues to attain both standards.

**1. Attainment of the 8-Hour NAAQS**

EPA determined that the BRNA area was attaining the 1997 8-hour standard

based on complete quality-assured, certified data for the 2006–2009 ozone monitoring seasons. For a more detailed rationale, see our final action at 75 FR 54778 (September 9, 2010). Since that time, complete, quality-assured and certified monitoring data for the 2010 calendar year have become available that show the area is still attaining the 1997 8-hour standard. Draft air quality monitoring data<sup>4</sup> indicate the area is still attaining the 1997 8-hour ozone standard. The fourth high values for 8-hour ozone for 2010, and the 3-year average of these values (*i.e.*, design value), are summarized in Table 1:

**TABLE 1—BRNA AREA, FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES DATA SUMMARY (PPM)<sup>1</sup>**

Site	4th Highest daily max			Design values three year averages
	2008	2009	2010	2008–2010
Plaquemine (22–047–0009) .....	0.076	0.071	0.074	0.073
Carville (22–047–0012) .....	0.073	0.076	0.072	0.073
Dutchtown (22–005–0004) .....	0.074	0.074	0.078	0.075
Baker (22–033–1001) .....	0.071	0.071	0.075	0.072
LSU (22–033–0003) .....	0.072	0.084	0.080	0.078
Grosse Tete (22–047–0007) .....	0.071	0.070	0.074	0.071
Port Allen (22–121–0001) .....	0.072	0.072	0.071	0.071
Pride (22–033–0013) .....	0.074	0.072	0.071	0.072
French Settlement (22–063–0002) .....	0.075	0.075	0.076	0.075
Capitol (22–033–0009) .....	0.067	0.076	0.076	0.073

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

In addition, as discussed below with respect to the maintenance plan, Louisiana has committed to continue monitoring in this area in accordance with 40 CFR part 58.

Should the area violate the 1997 8-hour ozone standard before the proposed redesignation is finalized, EPA will not proceed with final redesignation.

The ozone monitoring network run by LDEQ in the BRNA has monitored attainment with the 1997 8-hour ozone standard based on data from 2006 through 2010. The 1997 ozone NAAQS is 0.08 parts per million based on the three-year average of the fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor within an area. The 1997 ozone standard is considered to be attained at 84 parts per billion (ppb). The design value for the monitoring period 2006–2008 was 0.083 ppb. For the monitoring period 2007–2009, it was 0.080 ppb. For the monitoring period 2008–2010, the

design value for the BRNA was 0.078 ppb. Draft data available for 2011 are consistent with continued attainment. In summary, the data show BRNA has attained the 1997 8-hour ozone NAAQS.

**2. Attainment of the 1-Hour NAAQS**

On February 10, 2010 EPA determined that the BRNA area was attaining the 1-hour ozone standard based on quality-assured, certified data for the 2006–2008 ozone monitoring seasons. For a more detailed rationale, see our final action at 75 FR 6570. Since that time, complete, quality-assured and certified data that have become available showing the area continues to attain the 1-hour ozone standard as shown in Table 2.

**TABLE 2—SUMMARY OF 1-HOUR DESIGN VALUES THROUGH 2010**

Monitoring period	Design value (ppb)
2006–2008 .....	114
2007–2009 .....	114
2008–2010 .....	107

*B. Has the state of Louisiana met all applicable requirements of section 110 and part D of the CAA and does the BRNA have a fully approved SIP under section 110(k) of the CAA for purposes of redesignation to attainment?*

EPA has reviewed the Louisiana SIP for the BR area with respect to SIP requirements applicable for purposes of redesignation under part D of the Act for both the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. EPA believes that, with the exception of certain 1-hour and 8-hour ozone RACT requirements that will be acted on in a separate rulemaking, the Louisiana SIP

<sup>4</sup> <http://www.deq.louisiana.gov/portal/DIVISIONS/Assessment/AirFieldServices/>

[AmbientAirMonitoringProgram/AirMonitoringData.aspx](http://www.AmbientAirMonitoringProgram/AirMonitoringData.aspx).

for the BRNA currently contains approved SIP measures that meet the part D requirements applicable for purposes of redesignation. We are also proposing to find that the area meets the severe area 1-hour ozone and 1997 8-hour RACT requirements, provided that EPA finally approves in a separate rulemaking action the RACT requirements for the source categories covered by the CTG Rules Update. As discussed previously, EPA, in a separate final rulemaking, has approved the termination of the section 185 penalty fee requirement. The 1-hour and 1997 8-hour ozone applicable requirements are discussed in detail below.

In evaluating a request for redesignation, EPA's long-held position is that those requirements expressly linked by statutory language with the attainment and reasonable further progress requirements do not apply if EPA determines that the area is attaining the standard. Additionally, it is EPA's interpretation of CAA section 107(d)(3)(E) that applicable requirements of the Act that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant requirements of the Act that come due prior to the submittal of a complete redesignation request. See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri); September 4, 1992 Calcagni memorandum; September 17, 1993 Michael Shapiro memorandum, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI).

The applicable 1997 8-hour ozone standard requirements for the BRNA area are those for a moderate nonattainment area.

Because EPA found the BRNA monitored attainment of the 1-hour and 1997 8-hour standards (see citations in section V.A. above), it suspended the requirements for the state to submit certain planning SIPs related to attainment, including attainment demonstration requirements, the reasonably available control measures (RACM) requirement of section 172(c)(1) of the Act, the reasonable further progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the Act, and the requirement for contingency measures of section 172(c)(9) of the Act as long as the area

continues to monitor attainment of those standards. These requirements will cease to apply upon redesignation to attainment.

In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

[T]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans \* \* \* provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. [General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498, 13564 (April 16, 1992)]

See also Calcagni memorandum dated Sept 4, 1992 ("The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard." From the memorandum, section 4.b.i.).

In prior separate actions, EPA has finalized the termination of the requirement for the 1-hour ozone 185 fees program. EPA has proposed approval of the CTG Rules Update. EPA is thus proposing to find that upon final approval of the CTG Rules Update, the BRNA will have a fully approved SIP under 110(k) for redesignation purposes and it will meet all CAA 110 and part D applicable requirements for purposes of redesignation for the 1997 8-hour ozone standard.

#### 1. The BRNA Has Met All Requirements of Section 110 and Part D of the CAA Applicable for Purposes of Redesignation for the 8-Hour NAAQS

##### a. Section 110 and General SIP Requirements

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a State must have been adopted by the State after reasonable public notice and hearing, and, among other things, must: Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification

and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

We believe that the section 110 elements that are not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. Only the section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176 (October 10, 1996)) and (62 FR 24826 (May 7, 1997)); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458 (May 7, 1996)); and Tampa, Florida, final rulemaking (60 FR 62748 (December 7, 1995)). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890 (June 19, 2000)), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399 (October 19, 2001)).

We have reviewed Louisiana's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Louisiana SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.970–.999). In addition, EPA has proposed approval of a section 110(a)(2) Infrastructure SIP for PM2.5 and the 1997 8-hour ozone standard. (April 18, 2011, 76 FR 21682) Final action on the April 18, 2011 proposal is not required for purposes of redesignation.

##### b. Part D SIP Requirements

EPA has reviewed the Louisiana SIP for the BRNA area with respect to SIP requirements applicable for purposes of

redesignation under part D of the Act for both the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. EPA believes that the Louisiana SIP for the BRNA area contains approved SIP measures that meet the part D requirements applicable for purposes of redesignation. EPA has approved or proposed to approve all of the required Part D elements. We are proposing to find the NO<sub>x</sub> and VOC RACT requirements have been met as part of this redesignation action. The VOC RACT finding is contingent on our finalizing our proposed approval of the rules implementing RACT controls on the source categories covered by the CTG Rules Update. As discussed previously, we have finalized a separate action approving the termination of the 185 fee requirement. Upon final approval of the CTG Rules Update, the BRNA area will meet all of the requirements applicable to the area under part D for purposes of redesignation. The 1-hour and 1997 8-hour ozone applicable requirements are discussed in detail below.

(i) Has the BRNA met the part D nonattainment area requirements under the 1-hour ozone standard?

The Baton Rouge 1-hour ozone nonattainment area was reclassified as severe for that standard, effective June 23, 2003. Thus, the 1-hour ozone standard requirements applicable to the area are those that apply to nonattainment areas classified as severe. Upon reclassification to severe, under section 211(k) of the Act, the use of reformulated gasoline also was to be required in the BRNA one year after the effective date of the reclassification. However, the state never implemented RFG in the BR area. As noted earlier, enforcement of the RFG requirement in the BRNA is currently stayed by court order. As such, the state has not relied on the RFG program in the past for emissions reduction and does not rely on RFG in its maintenance plan for attainment purposes. Since it is a program implemented by EPA and not by the State, we do not consider RFG a necessary requirement for redesignation. A detailed analysis of the relevant requirements and their status is provided below.

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone NAAQS requirements that continue to apply after revocation of the 1-hour ozone NAAQS for former 1-hour ozone nonattainment areas. Section 51.905(a)(1) provides that:

The area remains subject to the obligations to adopt and implement the applicable requirements defined in section 51.900(f),

except as provided in paragraph (a)(1)(iii) of this section and except as provided in paragraph (b) of this section.

Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states:

Applicable requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS:

(1) Reasonably available control technology (RACT).

(2) Inspection and maintenance programs (I/M).

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean-fuel vehicle program under section 182(c)(4) of the CAA.

(7) Clean fuels for boilers under section 182(e)(3) of the CAA.

(8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.

(10) TCMs under section 182(c)(5) of the CAA.

(11) Vehicle Miles Travelled (VMT) provisions of section 182(d)(1) of the CAA.

(12) NO<sub>x</sub> requirements under section 182(f) of the CAA.

(13) Attainment demonstration or alternative as provided under section 51.905(a)(1)(ii).

As explained earlier in this action, in addition to applicable requirements listed under section 51.900(f), the State must also comply with the additional 1-hour anti-backsliding requirements discussed in the Court's decisions in *South Coast Air Quality Management Dist. v. EPA*: (1) NSR requirements based on the area's 1-hour ozone nonattainment classification; (2) section 185 source penalty fees; (3) contingency measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA for areas not making reasonable further progress toward attainment of the one-hour ozone NAAQS, or for failure to attain the NAAQS; and, (4) transportation conformity requirements for certain types of Federal actions.

The following discusses how the applicable CAA requirements have been met in the BRNA.

40 CFR 51.905 (1), (3), and (12). RACT, Major source applicability cut-offs for purposes of RACT, and NO<sub>x</sub> requirements under section 182(f) of the CAA. Sections 172(c)(1) and 182 of the CAA require areas that are classified as moderate or above for ozone nonattainment to adopt Reasonably Available Control Technology (RACT) requirements for sources that are subject to Control Techniques Guidelines

(CTGs) issued by EPA and for "major sources" of volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>), which are ozone precursors. See 42 U.S.C. sections 7502(c)(1) and 7511a(b) and (f). RACT is defined as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979). A CTG provides information on the available controls for a source category and provides a "presumptive norm" RACT. In this action, EPA is addressing RACT for both NO<sub>x</sub> and VOCs in the BR area for the 1997 8-hour ozone standard, and for the 1-hour standard.

The Phase 1 Rule provides that 1-hour ozone nonattainment areas designated as nonattainment for the 8-hour ozone NAAQS are required to adopt and implement "applicable requirements" according to the area's classification under the 1-hour ozone standard at the time of designation under the 8-hour standard (see 40 CFR 51.905(a)(i)). The BR area was classified as a severe nonattainment area for the 1-hour ozone NAAQS at the time of the 8-hour designation and an outstanding "applicable requirement" for the BR area is VOC and NO<sub>x</sub> RACT. Louisiana previously adopted rules to address RACT requirements for all source categories covered by EPA CTGs that had been issued up to that time, and to address major sources at the serious area major source threshold of 50 tons per year (tpy). The reclassification of the area from serious to severe for the 1-hour ozone standard, on April 24, 2003 (68 FR 20077), required Louisiana to ensure that RACT was in place on non-CTG sources down to 25 tpy. Louisiana has submitted SIP revisions to address the NO<sub>x</sub> and VOC RACT requirement for non-CTG sources down to 25 tpy for BR for purposes of the 1-hour ozone requirement and to address NO<sub>x</sub> and VOC RACT for the 8-hour ozone NAAQS. On June 15, 2005, Louisiana submitted rule revisions lowering the major source NO<sub>x</sub> and VOC applicability from 50 to 25 tpy for purposes of non-CTG RACT. We approved these rule revisions as part of a larger package on July, 5, 2011 (76 FR 38977).

For the 1997 8-hour ozone RACT requirements, according to EPA's Phase 2 Rule (70 FR 71612, November 29, 2005), areas classified as moderate nonattainment or higher must submit a demonstration, as a revision to the SIP, that their current rules fulfill 1997 8-hour ozone RACT requirements for all



CTG categories and all major non-CTG sources. The State may either demonstrate the existing SIP approved RACT rules continue to be RACT or submit revised RACT rules (See EPA's Phase 2 Rule: 70 FR 71612, as further explained in a memo from William T. Harnett dated May 19, 2006, which is included in the docket). Since BR is classified as moderate for the 1997 8-hour ozone standard, for purposes of meeting the 8-hour RACT requirement, the BR area must demonstrate RACT level controls for sources covered by a CTG document, and for each major non-CTG source.

Louisiana has submitted several SIP revisions to address the 1997 8-hour ozone standard RACT requirements for NO<sub>x</sub> and VOCs for BR. These revisions are being addressed by EPA through two actions.

First, on June 20, 2009 and August 20, 2010, Louisiana submitted SIP revisions to control VOC emissions in response to CTGs issued in 2006, 2007, and 2008. On March 17, 2011, we proposed to approve these SIP revisions, which we refer to as the CTG Rules Update (76 FR 14602). As part of the CTG Updates proposed rule, we also proposed approval, through parallel processing, of a revision proposed by Louisiana on January 20, 2011. If EPA issues a final approval of the rules addressed in the CTG Rules Update by the time this redesignation goes final, then Louisiana will have met for BR the requirement to adopt RACT rules for sources addressed in any newly issued CTGs.

Second, we are proposing in this action to approve the RACT demonstration submitted by LDEQ on August 20, 2010, and a supplement on May 16, 2011, which provides an analysis demonstrating how the BR area meets RACT requirements for all other CTG and non-CTG sources through the currently SIP-approved RACT rules. EPA reviewed and evaluated LDEQ's RACT determination for both NO<sub>x</sub> and VOCs. This review and evaluation is provided in the RACT TSD which accompanies this action.

The State submittal included among other things, the following components:

(a) A RACT demonstration including adopted State rules, which have been federally approved, addressing RACT requirements for CTG and ACT source categories. See the RACT TSD for more information.

(b) An analysis of RACT for all major sources not covered by a CTG or ACT and how these are controlled to meet RACT. This information was provided in the August 2010 submittal, and also in an Addendum to Appendix F dated May 16, 2011.

To ensure RACT was in place for major sources, the State identified all sources that emit or have the potential to emit at least 25 tons/year of VOC in the BR 1997 8-hour ozone nonattainment area. The State provided a list of each major source in a source category covered by a CTG/ACT and the rules applicable to those major sources.

The State's RACT SIP analysis was available for public comment prior to adoption by the State. For the RACT portion of its August 2010 submittal, the State received a comment letter from EPA which was addressed in the adopted rulemaking with an amendment for the RACT analysis. EPA evaluated the following elements of LDEQ's RACT SIP submittal for the BR Area:

- State Rules Addressing NO<sub>x</sub> RACT Requirements and VOC RACT Requirements for sources Covered by a CTG/ACT.
- Potential Major VOC Emissions Sources possibly not covered by a CTG/ACT.

EPA reviewed LDEQ's RACT analysis including the State's Rules and evaluation of major sources. Also, EPA reviewed LDEQ's emissions inventory database for potential sources missing from the LDEQ analysis. Based on this review, LDEQ's RACT analysis, including its identification of all sources requiring RACT, appeared to be thorough. Additional discussion of our review and evaluations is available in the TSD.

In today's proposal, we are proposing that if we take final action to approve the CTG Rules Update, and determine in this final rule that the existing SIP-approved rules remain RACT, then Louisiana's SIP would meet the NO<sub>x</sub> and VOC RACT requirements for 8-hour ozone standard for all CTG categories and for major sources of NO<sub>x</sub> and VOCs. We are also proposing that based on our July 5, 2011 approval (76 FR 38977) of the lower major-source threshold of 25 tpy, that the state has met its outstanding 1-hour RACT obligation for the BR area. Additional detail is provided in the TSD.

*40 CFR 51.905 (2). Inspection and maintenance programs (I/M).* The BRNA is required to implement a vehicle inspection and maintenance program in the five-parish area. EPA approved this program on September 26, 2002 (67 FR 60594) and a revision to the program on November 13, 2006 (71 FR 66113).

*40 CFR 51.905 (4). Rate of progress reductions.* We approved the post-1996 ROP Plan and its associated MVEB and a revised 1990 base year emissions inventory on August 2, 1999 (64 FR 35930) for the BRNA serious 1-hour

ozone nonattainment area. This plan covered the 3-year period between 1996 and 1999, achieving 9 percent reductions no later than November 15, 1999. As discussed previously, ROP is not a required element for redesignation request. With the Clean Data determinations for the 8-hour and 1-hour ozone standards, EPA suspended the obligations to submit SIP provisions to meet the 1-hour and 8-hour Rate of Progress requirements. If EPA finalizes approval of this redesignation, these obligations will be terminated.

*40 CFR 51.905 (5) Stage II vapor recovery.* EPA approved Louisiana Stage II Vapor Recovery rules for the BRNA on March 25, 1994 (59 FR 14112).

*40 CFR 51.905 (6) Clean-Fuel Vehicle program under section 182(c)(4) of the CAA.* The State met this requirement with a substitute program, which we approved on July 19, 1999 (64 FR 38577). This program imposes controls beyond the Act's requirements (*i.e.*, RACT) for storage tanks in the BRNA by requiring guide pole and stilling well controls on external floating roof tanks. The resultant long term emission reductions were greater than the Louisiana Clean Fuel Fleet program emission reductions in the ozone nonattainment area. We had previously approved a Clean Fuel Fleet program on December 22, 1995 (60 FR 54305).

*40 CFR 51.905 (7) Clean fuels for boilers under section 182(e)(3) of the CAA.* This is an extreme area requirement and therefore does not apply to the BRNA severe area.

*40 CFR 51.905 (8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.* This is an extreme area requirement and therefore does not apply to the BRNA severe area.

*40 CFR 51.905 (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.* EPA approved a Louisiana SIP revision for enhanced ambient monitoring on June 19, 1996 (61 FR 31037) as meeting section 182(c)(1) of the CAA. The monitoring network meets the requirements in 40 CFR part 58 and section 182(c)(1) for enhanced monitoring.

*40 CFR 51.905 (10) TCMs under section 182(c)(5) of the CAA.* As required by the Clean Air Act section 176(c) (42 U.S.C. 7506(c)), the Louisiana Department of Environmental Quality demonstrated conformity of area transportation plans to the motor vehicle emissions budgets established in the BRNA Attainment Demonstration approved by EPA on October 2, 2002 (67 FR 61786).

*40 CFR 51.905 (11) Vehicle miles traveled (VMT) provisions of section*

182(d)(1) of the CAA. EPA approved the VMT Offset Analysis on November 21, 2006 (71 FR 67308).

40 CFR 51.905 (13) Attainment demonstration or alternative as provided under section 51.905(a)(1)(ii). Louisiana elected the option to submit an 8-hour ozone attainment demonstration SIP to demonstrate attainment of the 1997 8-hour ozone standard by the area's 8-hour ozone attainment date with associated MVEBs and an RACM analysis. The SIP was submitted to EPA on August 31, 2010. EPA has not acted on it. As discussed previously, EPA's long-held position is that an attainment demonstration with the RACM analysis is not an applicable requirement for purposes of evaluating an ozone redesignation request where the area is attaining the standard. (General Preamble, 57 FR 13564). See also 40 CFR 51.918. Upon redesignation, the obligation is terminated. Moreover EPA has determined that the area has attained the 1-hour and 1997 8-hour ozone standards, and thus the area's obligation to submit either attainment demonstration has been suspended. See Our Clean Data Determinations at 75 FR 6570 and 75 FR 54778. Upon our final approval of the redesignation request the requirement to have an approved 1-hour and 8-hour attainment demonstration will be terminated.

(ii) South Coast Anti-Backsliding Measures

NSR. EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect, since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation dated October 14, 1994, titled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." The State's PSD program becomes effective in the area immediately upon redesignation to attainment.<sup>5</sup> Louisiana has demonstrated that BRNA will be able to maintain the standard without a part D NSR program in effect, and therefore, Louisiana need not have a fully approved part D NSR program prior to approval of the redesignation request. Consequently, EPA concludes

<sup>5</sup> If the State believes that a rule change is required, it must adopt and submit it to EPA for approval as a SIP revision. Upon EPA's approval of the SIP revision submittal, PSD applies in the area.

that an approved NSR program is not an applicable requirement for purposes of redesignation, where it is not required for maintenance, as is the case here. See the more detailed explanations of this issue in the following rulemakings: Detroit, Michigan (60 FR 12467–12468 (March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 Fr 53665, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR 31831, 31836–31837, June 21, 1996).<sup>6</sup>

Section 185 fees. On July 7, 2011 (76 FR 39755), EPA finalized approval of a determination to terminate the CAA section 1-hour ozone 185 penalty fees program requirement for the BRNA. EPA's rulemaking cited a January 5, 2010 guidance document regarding section 185, but the rulemaking proposal also set forth separately in detail EPA's proposed rationale for terminating 1-hour ozone anti-backsliding 185 requirements when EPA determines that an area has attained the 1-hour standard and when that attainment is due to permanent and enforceable requirements. 76 FR 17368 (March 29, 2011). EPA proposed and explained both its interpretation of the termination requirements, derived from statutory criteria for redesignation, and the application of this interpretation to the specific circumstances of the Baton Rouge area. EPA explained that the Baton Rouge area met the core redesignation requirements that would have been applicable were EPA still redesignating areas for the 1-hour standard—a process EPA discontinued six years ago because it was unnecessary and not consistent with revocation of the 1-hour standard.

EPA published notice of its proposed termination and EPA's underlying rationale in the **Federal Register**, and established a 30-day period for public comments to be submitted. No adverse comments were received; however,

<sup>6</sup> The interpretation that NNSR does not apply to areas designated attainment for a NAAQS and thus is not needed in the SIP for such an area is consistent with *Greenbaum v. EPA*, 370 F.3d 527, at 536 ("It would make little sense for [NSR] to be included in the post-attainment SIP, as the Clean Air Act \* \* \* explicitly states that attainment area SIPs must include a PSD program."). As the DC Circuit held in *Alabama Power*, 636 F.3d 323, at 365 (D.C. Cir. 1979), the applicability of PSD is geographically limited by the language of CAA section 165(a), which states that unless specified conditions are met, "[n]o major emitting facility \* \* \* may be constructed in any area to which this part [Part C] applies" (emphasis added). Thus, with respect to ozone, EPA's interpretation is that areas designated attainment for the 1997 8-hour standard are subject to section 165(a), not the 172(c)(5) SIP requirement.

commenters submitted 13 sets of comments in support of EPA's proposal.

On June 23, 2011, EPA signed a final rulemaking that terminated the 1-hour anti-backsliding section 185 requirements for the Baton Rouge area. Subsequently, on July 1, 2011, the DC Circuit issued a ruling in *Natural Resources Defense Council v. EPA*, No. 10–1056 (D.C. Cir.), vacating the guidance document. The Court's opinion, however, did not address the rationale or circumstances pertaining to the termination of the 1-hour anti-backsliding 185 requirements for any area including the Baton Rouge area. In the case of Baton Rouge, EPA, after providing for notice and comment on its proposed rationale and how it applies to the facts of Baton Rouge, determined that the area has attained the 1-hour ozone standard, and that this attainment is due to permanent and enforceable emissions reductions. In its proposed rulemaking, EPA explained how and why these findings justify termination of the section 185 requirements for Baton Rouge. See 76 FR 17368. EPA believes that the procedure and substance of the Baton Rouge rulemaking are outside the scope of the agency action of which the Court disapproved in its July 1 ruling, and that therefore the Baton Rouge termination determination survives and withstands the Court's ruling regarding EPA's guidance.

In its Baton Rouge proposal, EPA proposed its interpretation of the statutory requirements. EPA stated its belief that a state could meet its 185 1-hour anti-backsliding obligations through a SIP revision containing either the fee program prescribed in section 185, or an equivalent alternative program. It stated: "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 revised the NAAQS to make it less stringent. EPA explained that in its Phase 1 ozone implementation rule for the 1997 ozone NAAQS (69 FR 23951 April 30, 2004), 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. 76 FR 17369–70. 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 went on to state that it would

"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."

In the Baton Rouge proposed rulemaking, EPA proposed that if it determined that the area is attaining the 1-hour ozone NAAQS, based on permanent and enforceable emissions reductions, the area's existing SIP could be considered an adequate alternative program. EPA explained that under these circumstances, the Baton Rouge area's existing SIP measures, in conjunction with other enforceable Federal measures, would be adequate to achieve attainment, which is the purpose of the section 185 program. EPA stated that "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." 76 FR 17370.

EPA further explained its position:

"We believe that it is reasonable for the fee program obligation that applies for 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." 76 FR 17370.

In the proposed rulemaking, EPA referred to the January 5, 2010 guidance as "expressing [EPA's] views" as to "potential rationales" (76 FR 17371, emphasis added) for terminating 1-hour ozone section 185 requirements. With respect to the 1-hour section 185 anti-backsliding requirements for Baton Rouge, however, EPA stated that its proposed rulemaking notice for that area "formally sets forth EPA's legal interpretation concerning the basis for terminating those obligations", thereby making the specific rationale for Baton Rouge subject to notice and comment rulemaking. EPA then discussed at length the facts supporting its proposed finding that the Baton Rouge area had continuously attained the 1-hour ozone standard during the 2006–2008 time period, and that the state had shown that this attainment is due to permanent and enforceable emissions limitations, thereby supporting the conclusion that the State SIP had supplied an adequate alternative program under the specific circumstances presented. 76 FR 17371–72.

The Court's opinion does not preclude EPA from terminating the 1-hour section 185 anti-backsliding requirement for areas like Baton Rouge, that EPA has determined through notice and comment rulemaking, have attained the 1-hour ozone standard due to permanent and enforceable emissions reductions.

We therefore believe that, for the purpose here of evaluating applicable requirements pertaining to redesignation, Louisiana's obligation to satisfy the 1-hour ozone anti-backsliding requirement for section 185 fees has been terminated.

*Contingency Measures.* Sections 172(c)(9) and 182(c)(9) of the CAA require ozone plans for nonattainment areas to contain measures to be implemented in the event that any RFP or attainment deadline is missed. As explained in a March 26, 2009 (74 FR 13166) proposal, it is EPA's position that contingency measures are not an applicable requirement for purposes of evaluating an ozone redesignation request when an area is attaining the relevant standard. EPA's long-held position is that those requirements expressly linked by statutory language with the attainment and reasonable further progress do not apply when an area requesting redesignation is attaining the standard. Pursuant to EPA's determination that the BRNA attained the 1-hour ozone standard (February 10, 2010, 75 FR 13166), the requirement to submit the 1-hour contingency measures was suspended. This obligation will be terminated upon a final approval of the redesignation request.

For more detail regarding the applicable 1-hour ozone requirements and EPA's approval actions, see the Technical Support Document (TSD), which is included in the electronic docket. Listed below are the severe ozone 1-hour area requirements that have already been met by the BR area for the purposes of this redesignation.

Requirement Clean Air Act as amended in 1990 section	EPA Approval/other justification
182(a)(2)(A) RACT corrections .....	August 26, 1996 (61 FR 38590).
182(a)(2)(B) I/M Program .....	Required under section 182(c)(3). August 20, 1999 (64 FR 45454).
182(a)(2)(C) Permit programs and 182(a)(4) General Off-set requirement.	EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect, since PSD requirements will apply after redesignation.
182(a)(3)(B) Emissions Statements .....	February 6, 1995 (60 FR 02014).
182(b)(1) Plan Provisions for Reasonable Further Progress.	This is covered by the requirement in 182(c)(2).
182(b)(2) Reasonably Available Control Technology .....	May 5, 1994 (59 FR 23164). August 26, 1996 (61 FR 38590). December 31, 1996 (61 FR 55894). February 2, 1998 (62 FR 63658). November 8, 1998 (63 FR 47429).
182(b)(3) Gasoline Vapor Recovery .....	March 25, 1994 (59 FR 14112).
182(b)(4) Motor Vehicle Inspection and Maintenance .....	Required under section 182(c)(3). August 20, 1999 (64 FR 45454).
182(c)(1) Enhanced Monitoring .....	June 19, 1996 (61 FR 31035).
182(c)(2) Attainment and Reasonable Further Progress Demonstrations.	December 23, 1996 (61 FR 54737). August 2, 1999 (64 FR 35930).

Requirement Clean Air Act as amended in 1990 section	EPA Approval/other justification
182(c)(3) Enhanced Vehicle Inspection and Maintenance Program.	August 20, 1999 (64 FR 45454).
182(c)(4) Clean-Fuel Vehicle Programs .....	Clean Fuel Fleet Substitute Program, July 19, 1999.
182(c)(5) Transportation Control .....	October 2, 2002 (67 FR 61786).
182(c)(6) De Minimis Rule .....	This requirement is related to the NSR program that is not an applicable requirement for redesignation.
182(c)(7) Special Rule for Modifications of Sources Emitting Less Than 100 Tons.	This requirement is related to the NSR program that is not an applicable requirement for redesignation.
182(c)(8) Special Rule for Modifications of Sources Emitting 100 Tons or More.	This requirement is related to the NSR program that is not an applicable requirement for redesignation.
182(c)(9) Contingency Provisions .....	September 26, 2002 (67 FR 60590). This requirement was suspended pursuant to the 1-hour determination of attainment. February 10, 2010 (75 FR 6570).
182(c)(10) General Offset Requirement .....	September 30, 2002 (67 FR 61260).
182(d)(1) Vehicle Miles Traveled .....	November 21, 2006 (71 FR 67308).
182(d)(2) Offset Requirement .....	This requirement is related to the NSR program that is not an applicable requirement for redesignation.
182(d)(3) Enforcement Under Section 185 .....	July 7, 2011 (76 FR 39775).

(iii) Part D SIP Requirements Under 1997 8-Hour Standard: Part D, Subpart 2 Applicable SIP Requirements

The only moderate area requirements applicable for purposes of redesignation for the 1997 8-hour ozone standard under part D, section 182(b) that became due prior to the submission of the complete redesignation request are the control techniques guidelines (CTGs) to meet requirements for RACT under section 182(b)(2). The State submitted several SIP revisions addressing the CTG rules requirements, and provided a SIP revision addressing NO<sub>x</sub> and VOC RACT requirements in BR on August 31, 2010. The CTG Rules Update was proposed for approval in a separate rulemaking published in the **Federal Register** on March 17, 2011 (76 FR 14602). If EPA finalizes its proposed approval of the CTG Rules Update together with the NO<sub>x</sub> and VOC RACT requirements which are addressed in today's action, the area will have met all the requirements applicable under its prior severe 1-hour classification and current moderate 1997 8-hour classification for purposes of redesignation of the 1997 8-hour ozone standard. Additional information about the CTG Rules Update and RACT Update requirements is provided in the discussion above, as well as in the TSD.

(iv) Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code

(U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation). See also 60 FR 62748 (December 7, 1995, Tampa, Florida).

(v) NSR Requirements

As with the nonattainment NSR requirements for the 1-hour ozone standard, EPA has determined that areas being redesignated need not have an approved 1997 8-hour nonattainment NSR program prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect, since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment." Louisiana demonstrated in the accompanying maintenance plan that BR will be able to maintain the standard without a part D NSR program in effect, and therefore, Louisiana need not have

a fully approved part D NSR program prior to approval of the redesignation request. Louisiana's PSD program will become effective in BRNA upon redesignation to attainment (unless a rule change is necessary; see footnote 4). See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

(vi) Section 182(a)(1) Inventory Requirements

The moderate area requirements at section 182(a) and 40 CFR 51.915 require that the BR 1997 8-hour ozone area meet the emissions inventory requirements of section 182(a)(1). An emissions inventory is an estimation of actual emissions of air pollutants in an area. The emissions inventory consists of VOC and NO<sub>x</sub> emissions, as they are ozone precursors. EPA approved a base year inventory for 2002 on September 3, 2009 (74 FR 45561) under 182(b) for moderate areas. A more detailed discussion of the emission inventory for the BRNA can be found in the analysis of the maintenance plan for this redesignation below.

2. The BRNA Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA proposes to find that the area has an approved SIP for all the 1997 8-hour ozone requirements applicable for purposes of redesignation. This proposal is contingent on our final approval of the NO<sub>x</sub> and VOC RACT analyses and provisions that are addressed in today's action and in the CTG Rules Update. EPA is proposing to find that, upon EPA's final approval of

the BR emissions inventory, the VOC and NO<sub>x</sub> RACT analysis, and the CTG Rules Update, the BR area will meet all requirements applicable to the area for purposes of redesignation for the 1997 8-hour ozone standard under section 110 and part D and have a fully approved applicable implementation plan for the area under section 110(k). As noted earlier, implementation of RFG is not required for purposes of redesignation.

EPA may rely on prior SIP approvals in approving a redesignation request; see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Louisiana adopted and submitted, and EPA fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the BR area as discussed above.

As indicated, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area’s nonattainment status are not applicable requirements for purposes of

redesignation. As set forth above, with the exceptions noted, the area has met all other applicable requirements for purposes of redesignation for the 1997 8-hour ozone standard.

*C. Are the air quality improvements in the BR nonattainment area due to permanent and enforceable emission reductions resulting from the implementation of State and Federal regulations and other permanent and enforceable emission reductions?*

EPA proposes to find that Louisiana has demonstrated that the observed ozone air quality improvement in the BR area is due to permanent and enforceable reductions in emissions resulting from implementation of emissions controls contained in the SIP, Federal control measures, and other State-adopted control measures.

1. Emissions Reductions as Shown by Emissions Inventory Data

EPA believes that the improvement in air quality in the Baton Rouge area during the 2002–2008 timeframe, which resulted in attainment of both the 1-hour and 1997 8-hour ozone standards, is due to emissions reductions from permanent and enforceable measures. Table 3 shows the changes in emissions for NO<sub>x</sub> and VOC’s from 2002 to 2008.

TABLE 3—SUMMARY OF TOTAL EMISSION REDUCTIONS

	NO <sub>x</sub> TPD	VOC TPD
Base Year (2002) Inventory .....	200.3	211.0
2008 Emissions .....	143.8	101.3

Emissions of both VOC and NO<sub>x</sub> 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.

The State also analyzed the changes in VOC and NO<sub>x</sub> emissions in the BR area between the original base year of 2002 and the year 2006 during which the area attained the standard. The 2006 inventory was generated from the approved 2002 base year inventory (September 3, 2009, 74 FR 45561). The 2002 and 2006 emissions for the BRNA area were determined using EPA accepted methods and guidance.<sup>7</sup> The State documented the VOC and NO<sub>x</sub> emission control measures that have been implemented in the BR area for at least the past 3 years. Comparing the 2002 and 2006 NO<sub>x</sub> and VOC emissions to the projected future year emissions, a downward trend is observed. Broken out by source category, the reduction in emissions is shown in Table 4.

TABLE 4—A COMPARISON OF VOC AND NO<sub>x</sub> EMISSIONS IN THE BRNA AREA BY SOURCE CATEGORY FROM THE YEAR 2002 AND THE YEAR 2006

[Tons per average ozone season day]

Source category	VOC Emissions (tpd)			NO <sub>x</sub> Emissions (tpd)		
	2002	2006	Percent change	2002	2006	Percent change
Point .....	40.17	33.10	– 17.6	117.91	73.40	– 37.75
Area .....	29.71	31.59	+5.95	3.90	4.06	+4.10
Non-Road Mobile .....	22.97	13.60	– 22.38	43.59	36.75	– 15.69
On-Road Mobile .....	14.99	17.60	+16.75	34.01	29.30	– 13.85
Total .....	107.84	95.89	– 11.08	199.41	143.50	– 28.04

2. Impact of Emissions Controls Implementation: Trend Analysis

The State provided design value data from 1997 through 2008 to illustrate the downward trend in ozone since 2005. (See Chart 1 on page 9 of the state’s submittal.) In addition, it provided a table of design values by monitor for the 2006–2008 monitoring period that also shows the general downward trend in emissions during that time period. (Table 1, *Ibid.*)

3. Permanent and Enforceable Emissions Controls Implemented

The Baton Rouge nonattainment area control strategy is primarily NO<sub>x</sub>-driven, therefore no major VOC rules have been adopted other than those required to meet updated CTGs as required by the Act. LDEQ attributes the reductions in emissions primarily to the stationary source NO<sub>x</sub> control measures implemented no later than May 1, 2005, which were required by the State’s

rules. The following is a discussion of the permanent and enforceable emission controls that have been implemented in the BR area. In Louisiana’s 8-hour ozone redesignation request, the State documented all of the emission control rules or programs that have impacted VOC or NO<sub>x</sub> emissions during the period 1990–2008.

<sup>7</sup> EPA. 2007. Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone PM<sub>2.5</sub>, and Regional

Haze. Prepared by the U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Analysis Division, Air

Quality Modeling Group, Research Triangle Park, NC (EPA-454/B-07-002, April 2007).

a. Reasonably Available Control Techniques

Louisiana notes that a number of VOC and NO<sub>x</sub> RACT rules which were developed in prior years have continued to provide additional VOC and NO<sub>x</sub> emission reductions during more recent years. For VOC controls, with the exception of the source categories covered by the most recently published CTGs (see a discussion of the new CTG RACT rules below), Louisiana has adopted and implemented VOC RACT rules for source categories covered by older (prior to 2006) CTGs and for major non-CTG sources in the five-parish BRNA. All VOC RACT rules are contained in Chapter 21 of Louisiana Administrative Code (LAC 33:III Chapter 21), and all NO<sub>x</sub> RACT rules are contained in Chapter 22 of the LAC (LAC 33:III Chapter 22). All of these VOC and NO<sub>x</sub> RACT rules have been

approved by the EPA as revisions of the Louisiana SIP.

b. ROP Plans and Attainment Demonstration Plan

EPA approved a serious area attainment plan and ROP plans as noted above under the 1-hour ozone standard requirements for serious areas. October 22, 1996 (61 FR 54737) and July 2, 1999 (64 FR 35930). Measures in these plans include Stage II Vapor Recovery, marine vapor recovery, tank vent recovery, emission reductions from vents to flares, tank fitting controls, fugitive emission controls, secondary roof seals on tanks, as well as some federally required controls pursuant to NESHAPs and NSPS. All these measures continue to produce reductions today.

c. NO<sub>x</sub> Control Rules

NO<sub>x</sub> emission reductions were achieved through the implementation of

NO<sub>x</sub> 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), and adopted by the state on August 20, 2003 and approved by EPA on July 5, 2011 (76 FR 38977). These rules were implemented between February 20, 2002, and May 1, 2005.

The rules established emission factors (standards) for NO<sub>x</sub> sources within the BRNA. These revisions achieved approximately 40 TPD of additional NO<sub>x</sub> reductions in the BRNA beginning with the compliance date of May 1 2005 and continuing to date. These rules are still part of the state's rules and are enforceable at the state and Federal level. The specific standards are listed below.

NO <sub>x</sub> Reduction measures 2002–2008	NO <sub>x</sub> Standard
<b>Electric Power Generating System Boilers:</b>	
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.
<b>Process Heater/Furnaces:</b>	
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.
<b>Stationary Gas Turbines:</b>	
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.
<b>Stationary Internal Combustion Engines:</b>	
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 .....	2g/Hp-hr.

The bulk of the NO<sub>x</sub> emissions between 2002 and 2006 came from the source categories listed in the table above. In 2006, stationary (point) sources made up over 51 percent of the entire NO<sub>x</sub> inventory for the BRNA, which is a decrease from over 59 percent in 2002. 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 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).

d. Federal Emission Control Measures

LDEQ notes that on-road Federal emission control measures have had positive impacts on VOC and NO<sub>x</sub> emissions in the BR area for reaching attainment. Table 5 shows the Federal emissions reductions programs in the BR area for fuels and motor vehicles:

TABLE 5—BR FEDERAL EMISSION REDUCTIONS PROGRAMS

- Federal Measures:
- Tier 2 Fuel and Vehicle Emission Standards
  - Onboard Refueling Vapor Recovery (ORVR) for light-duty vehicles
  - Heavy-Duty Engine and Vehicle and Fuel Standards
  - Federal controls on certain nonroad engines
  - Federal control through Maximum Achievable Control Technology (MACT) of Hazardous Air Pollutants emissions
  - Volatile Organic Compound Emission Standards for Consumer Products

TABLE 5—BR FEDERAL EMISSION REDUCTIONS PROGRAMS—Continued

- Volatile Organic Compound Emission Standards for Architectural Coatings
- Locomotives and Marine Compression-Ignition Engines

Summary

The above discussion shows that state, local and Federal emission controls have contributed to the ozone air quality improvement in the BR area that resulted in attainment of the 1997 8-hour ozone standard. Emissions inventory data demonstrates that NO<sub>x</sub> and VOC emissions have dropped substantially between 2002 and 2008 for stationary sources primarily but also for mobile sources. These substantial decreases in ozone precursors can be directly attributed to State and Federal measures. As noted above, Louisiana has committed to retaining in the SIP all existing emission control measures that affect ozone levels in the BR area after the BRNA is redesignated to attainment of the 1997 eight-hour ozone NAAQS. All changes in existing rules subsequently determined to be necessary must be submitted to the EPA for approval as SIP revisions.

EPA thus proposes to find that the improvement in air quality in the BR area is due to permanent and enforceable emissions reductions. Section 107(d)(3)(E)(iii).

*D. Does the BRNA have a fully approvable maintenance plan pursuant to section 175A of the CAA?*

In conjunction with its request to redesignate the BR 1997 8-hour ozone nonattainment area, the State of Louisiana included a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS in the BR area for at least 10 years after redesignation to attainment. Section 107(d)(3)(E)(iv). As discussed below, EPA has reviewed this maintenance plan and is proposing to approve it as meeting the requirements of section 175A of the CAA.

1. What is required in an ozone maintenance plan?

Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation to attainment of a NAAQS. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. The State must commit to submit a revised maintenance plan within eight years after the redesignation. This revised

maintenance plan must provide for maintenance of the ozone standard for an additional 10 years beyond the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures as EPA deems necessary to assure prompt correction of any future NAAQS violation. The September 4, 1992, Calcagni memorandum provides additional guidance on the content of maintenance plans.

An ozone maintenance plan should, at minimum, address the following: (1) The attainment VOC and NO<sub>x</sub> emission inventories; (2) a maintenance demonstration showing maintenance for the 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and, (5) contingency measures to correct a future violation of the NAAQS.

2. What is the attainment inventory for the BRNA?

Sections 182(a)(1) of the CAA requires that the SIP include a comprehensive, accurate and current inventory of actual emissions from sources of relevant pollutants in the nonattainment area. The emission inventory for an ozone nonattainment area contains both VOC and NO<sub>x</sub> emissions, which are precursors to ozone formation. LDEQ prepared a comprehensive emission inventory for the BR area including point, area, on-road, and off-road mobile sources for the year 2006. Table 6 lists the 2006 emissions inventory for the BR area. EPA reviewed the 2006 inventory and determined that it was developed in accordance with EPA guidelines<sup>8</sup>. For a full discussion of our evaluation, please refer to Part II of the TSD, found in the electronic docket.

TABLE 6—BR 2006 EMISSION INVENTORY

Source type	NO <sub>x</sub>	VOC
<b>2006 Inventory (Tons/Day)</b>		
Point .....	73.4	33.1
Nonpoint .....	4.06	31.59
On-road Mobile .....	29.3	17.60
Non-road Mobile .....	36.75	13.59
<b>Total .....</b>	<b>143.51</b>	<b>95.88</b>

<sup>8</sup> Emission Inventory Improvement Program (EIIP), EPA-454/R-97-004a-g, <http://www.epa.gov/ttn/chief/eiip/techreport/>; AP-42, <http://www.epa.gov/ttn/chief/ap42/index.html>; Air Emissions Reporting Requirements (AERR Rule), [http://www.epa.gov/ttn/chief/aerr/final\\_published\\_aerr.pdf](http://www.epa.gov/ttn/chief/aerr/final_published_aerr.pdf)

Louisiana developed its 2006 Emissions Inventory from the previously approved 2002 baseline inventory (September 3, 2009, 74 FR 45561). The State relied on this 2006 inventory in preparing the attainment demonstration modeling that is included in Appendix D of the State's submittal.

The 2006 and projected year emissions for the BRNA 5-parish area were determined using the following procedures:

*Point Source Emissions.* Point source VOC and NO<sub>x</sub> emissions for 2006 were calculated using methodologies according to Federal guidelines and using AP-42 or other approved methods. The State collected emissions data, which are estimates of actual emissions, provided by the facilities. A list of those facilities is provided in Appendix C of the LDEQ submittal.

*Area Source Emissions.* Area source emissions from the 2002 National Emission Inventory (NEI) were used as the starting point for the 2006 Louisiana area emissions. Projection years' emissions were initially grown using the EPA's Economic Growth Analysis System (EGAS) version 5.0 growth factors. The methodologies used to develop area sources inventory are described in Appendix D of the submittal.

*On-road Emissions.* Mobile source emissions were calculated based on Parish-specific inputs provided by several state agencies. MOBILE6 was then used to generate emission factors. A detailed description of on-road emission estimates is found in Appendix D of the LDEQ submittal.

*Non-road Emissions.* For all non-road mobile categories except aircraft, locomotives, and commercial marine vessels, the emissions were calculated using the EPA's National Mobil Inventory Model (NMIM) to generate Louisiana state-wide parish level emissions estimates. Airport and locomotive emissions were derived from 2006 LDEQ inventory. Marine emissions were developed from CENRAP inventories. A detailed description of non-road emission estimates is found in Appendix D of the submittal.

3. Has the state of Louisiana committed to maintain the ozone monitoring system in the BRNA?

The State of Louisiana has committed to continue operation of an EPA-approved ozone monitoring network and to work with EPA pursuant to 40 CFR part 58 with regard to the continued adequacy of the network, including whether additional

monitoring is needed, and when a monitor site can be discontinued.

4. Has the state demonstrated maintenance in the BRNA?

As part of its request to redesignate the BR 1997 8-hour ozone standard nonattainment area, the State of Louisiana included a SIP revision to incorporate a maintenance plan as required under section 175A and section 107(d)(3)(E)(iv) of the CAA. The maintenance plan includes a demonstration based on a comparison of emissions in one of the attainment years (2008) and projected emissions to demonstrate maintenance of the 1997 8-hour ozone NAAQS in the BR area for at least 10 years after the anticipated redesignation year. CAA

107(d)(3)(E)(iv). To demonstrate maintenance of the 1997 8-hour ozone standard, LDEQ projected VOC and NO<sub>x</sub> emissions to 2022 and to several interim years, 2012, 2016, and 2020. These emissions were compared to the 2008 attainment year and 2006 base year emissions (both years in the 2006–2008 attainment period) to show that emissions of NO<sub>x</sub> and VOC, remain below the attainment levels for the entire demonstrated maintenance period.

In projecting data for the maintenance year 2022 inventory, LDEQ used several methods to project data from the base year 2006 to the years 2008, 2012, 2016, 2020, and 2022. These projected inventories were developed using EPA-

approved technologies and methodologies. Point source and non-point source projections were derived from the Emissions Growth Analysis System version 6.0 (EGAS 6.0). Non-road mobile projections were derived from EGAS 6.0, and from NONROAD 2005.

To demonstrate declines in future emissions, LDEQ provided a comparison between the 2006 inventory and the emission growth projections for the years 2008, 2012, 2016, 2020, and 2022. Table 7 summarizes the 2006 and 2008 attainment years, interim years during the maintenance period, horizon year 2022, the end year for the maintenance period, and net changes in VOC and NO<sub>x</sub> emissions by source type.

TABLE 7—SUMMARY OF FUTURE VOC AND NO<sub>x</sub> EMISSIONS FOR THE BRNA AREA  
[Tons per average ozone season day]

Source category	2006		2008		2012		2016		2020		2022		Net change 2022–2006	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Point .....	33.10	73.40	32.22	67.71	32.22	67.71	32.22	67.71	32.22	67.71	32.22	67.71	-0.88	-5.69
Nonpoint .....	31.59	4.06	32.35	4.16	33.63	4.36	35.59	4.53	37.54	4.74	38.51	4.83	6.92	0.78
Nonroad .....	13.60	36.75	12.59	37.45	11.22	38.51	10.27	39.59	9.78	41.36	9.99	40.60	-3.61	3.85
Onroad .....	17.60	29.30	17.82	28.35	10.64	18.63	9.70	12.08	7.82	8.33	7.55	6.96	-10.1	-22.34
<b>Total .....</b>	<b>95.89</b>	<b>143.51</b>	<b>94.98</b>	<b>137.66</b>	<b>87.70</b>	<b>129.18</b>	<b>87.77</b>	<b>123.84</b>	<b>87.36</b>	<b>122.14</b>	<b>88.27</b>	<b>120.10</b>	<b>-7.67</b>	<b>-23.40</b>

Federal rules implemented after attainment of the 1997 8-hour ozone standard contribute to continued maintenance in the area. These measures include:

*Non-Road Diesel Rule.* EPA promulgated this rule in 2004. It applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO<sub>x</sub> emissions from non-road diesel engines by up to 90 percent beginning with the 2008 Model Year equipment. This rule will be fully implemented in 2014.

*Locomotives and Marine Compression-Ignition Engines.* This EPA rule was adopted March 14, 2008, and includes new emission standards for locomotives and marine diesel engines that will reduce NO<sub>x</sub> emissions by about 80 percent compared with engines meeting the current standards. The new requirements have three parts: Tightening emission standards for existing locomotives and large marine engines when they are remanufactured, effective in 2008; beginning in 2009, phasing in Tier III standards for new locomotives and marine diesel engines; and establishing more stringent Tier IV standards for new locomotives and marine diesel engines; these standards will be phased in beginning in 2014.

EPA evaluated the BRNA maintenance emission inventory component of the redesignation request and determined that LDEQ demonstrated that emissions levels of VOC and NO<sub>x</sub> in the 2022 maintenance year will decrease from the 2006 baseline year by 7.67 and 23.40 tons per average ozone season day respectively. Overall VOC and NO<sub>x</sub> emissions levels will remain below the 2006–2008 attainment year levels throughout the maintenance period. EPA also determined that LDEQ has adequately calculated and documented emissions by using methods consistent with EPA’s guidance. (See footnote 7).

As shown in the table and discussion above, the State demonstrated that the total future year ozone precursor emissions will be less than the 2008 attainment year’s emissions. The attainment inventory submitted by the LDEQ for this area is consistent with EPA guidance. (See footnote 7). Considering emissions projections, EPA finds that the expected future emissions levels in 2012, 2016, 2020, and 2022 have been shown to be lower than emissions levels in 2006 and 2008.

The NO<sub>x</sub> projections in Louisiana’s maintenance demonstration relied in part on reductions due to the Clean Air Interstate rule (CAIR). CAIR, however,

was remanded back to EPA, and EPA on July 6, 2011 issued the final Cross-State Air Pollution Rule<sup>9</sup> (CSAPR) to replace CAIR. EPA believes the reductions for Louisiana due to the CSAPR are similar in magnitude to those projected by CAIR. Louisiana’s Ozone season NO<sub>x</sub> budget for CAIR was 17,085 tpy for EGUs from 2009 to 2014 and lowered to 14,238 tpy NO<sub>x</sub> for 2015 and later. The CSAPR ozone season NO<sub>x</sub> limit is 13,432 tpy, which is 806 tpy less NO<sub>x</sub> than the CAIR budget. So with the reductions from the CSAPR, we believe that Louisiana’s maintenance demonstration 10 year projection remains valid.

Pre-control modeling in support of the CSAPR indicates that the Baton Rouge area will not be in attainment of the 1997 8 hour ozone standard in 2012 because of impacts from upwind states. For this reason, upwind States with a significant impact on the Baton Rouge area are required to reduce their NO<sub>x</sub> emissions. The CSAPR modeling indicates the Baton Rouge area will be in attainment in 2014 after institution of the CSAPR controls. The 2014 control case modeling is projected off a center weighted average of design values

<sup>9</sup>The Cross State Air Pollution Rule was proposed August 2, 2010 as the “Transport Rule.” We refer to the rule as the CSAPR.



during the period 2003–2007. Additional CSAPR modeling, however, projecting off a single year's design value for 2005 (years 2003–2005) projects that the area will not be in attainment in 2014. This variation in model projections, depending on the projection year, is an indication the Baton Rouge area could have some difficulty in maintaining attainment in years when meteorology particularly favors ozone production. The maintenance plan, however, indicates that NO<sub>x</sub> emissions will continue to decrease over the life of the plan, continuing to improve Baton Rouge's ability to maintain attainment in the future. In addition, section 175 requires that the area have contingency measures that must be implemented, if due to meteorological fluctuations, the area does come out of attainment. We discuss the adequacy of these contingency measures elsewhere in the notice. Therefore, after considering the CSAPR modeling but also considering the projected decline in emissions and the fact that the maintenance plan has contingency measures, we believe it is appropriate to approve the maintenance plan for the Baton Rouge area.

The fact that EPA is proposing to redesignate Baton Rouge to attainment does not remove the need to address emissions in upwind States that impact ozone levels in Baton Rouge. As discussed above, Baton Rouge is projected to be nonattainment without the CSAPR reductions. The reductions in the CSAPR along with other State and Federal measures are projected to bring the area into attainment. Furthermore, without a cap on emissions in upwind States with a significant impact, emissions might in fact grow, increasing the possibility that Baton Rouge will not be able to maintain attainment. Furthermore, since upwind States are not required to have contingency measures, it is incumbent on EPA to ensure that States with significant impacts are appropriately controlled.

LDEQ also provided attainment demonstration modeling in support of its redesignation request. The attainment demonstration modeling can be found in Appendix D of the Redesignation Request and Maintenance Plan. The modeling demonstration was conducted according to EPA guidance.<sup>10</sup> The modeling simulation was for June

2006 using a nested 36/12/4 km grid system, with the 4-km grid focused on Louisiana and the immediate Gulf coast area. The weight of evidence assembled from the modeling analyses and projection methodologies described in the report demonstrated that the 1997 8-hour ozone standard would be attained in the Baton Rouge area by 2009. The area did indeed attain the standard by the close of the ozone season on December 31, 2008. This modeling has a refined grid focused on the Baton Rouge area, and thus it provides further support that the Baton Rouge area has attained due to permanent and enforceable reductions and should remain in attainment during the term of the maintenance plan.

EPA proposes to find that LDEQ has demonstrated maintenance of the ozone standard in the BR area during the 10 year maintenance period, based on projections that total VOC and NO<sub>x</sub> emissions during this period will remain below the 2006 and 2008 attainment levels emissions.

#### 5. What is the contingency plan for the BRNA?

##### a. Verification of Continued Attainment

Louisiana has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the BR area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Louisiana will track the progress of the maintenance plan through continued ambient ozone monitoring in accordance with the requirements of 40 CFR part 58, and by performing future reviews of actual emissions for the area using the latest emissions factors, models, and methodologies. The State will work with EPA to ensure that the air monitoring network continues to be effective and will quality assure the data according to Federal requirements as one way to verify continued attainment. In addition the State will compare emission inventory data submitted to the National Emission Inventory with the emission growth data submitted in the maintenance plan to ensure emission reductions continue the downward trend.

##### b. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan

include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Louisiana has adopted a contingency plan for the BR area to address possible future ozone air quality problems.

The triggering mechanism for activation of contingency measures in the BR maintenance plan is a monitored violation of the 1997 8-hour ozone standard. If contingency measures are triggered, LDEQ has committed to adopt additional measures, if needed beyond the adopted measures included in the submittal, and to implement the measures as expeditiously as practicable, but no later than 24 months following the trigger.

The following contingency measures are identified for possible implementation, but may not be limited to:

- Extending the applicability of the State's current NO<sub>x</sub> rule in LAC 33:III.2201 by adding a new Section, LAC 33:III.2202, that would extend LAC 33:III.2201's application to include the months of April and October each year (currently LAC 33:III.2201 applies from May 1 to September 30). This would assist in reducing incidences of high ozone days in the BRNA. See the TSD for AQ 350. Because the state has adopted this rule and submitted it to EPA, we are proposing to approve this rule revision in this rulemaking. In addition, the state will consider other measures such as lowering the NO<sub>x</sub> emissions factors of LAC 33:III.2205.D and/or requiring more stringent monitoring of elevated flares, as well as measures targeting the following:

- Diesel retrofit/replacement initiatives;
- Programs or incentives to decrease motor vehicle use;
- Implementation of fuel programs including incentives for alternative fuels;

<sup>10</sup> EPA. 2007. Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone PM2.5, and Regional Haze. Prepared by the U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC (EPA-454/B-07-002, April 2007).

- Employer-based transportation management;
- Anti-idling ordinances;
- Programs to limit or restrict vehicle use in areas of high emission concentration during periods of peak use.

Given the substantial amount of industrial emissions in the Baton Rouge Area, and the fact the area's ozone problem is mostly driven by NO<sub>x</sub> emissions, these potential contingency measures would be appropriate for adequately correcting an attainment problem.

These contingency measures and schedules for implementation are consistent with EPA's longstanding guidance regarding contingency measures for maintenance plans under section 175A. The State will continue to operate appropriate ambient ozone monitoring sites in the BR area to verify continued attainment of the 1997 ozone NAAQS. The air monitoring results will reveal changes in the ambient air quality as well as assist the State in determining which contingency measures will be most effective if necessary.

As required by section 175A(b) of the CAA, Louisiana commits to submit to the EPA an updated ozone maintenance plan eight years after redesignation of the BR area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A(d) of the CAA, Louisiana has also committed to retain VOC and NO<sub>x</sub> control measures contained in the SIP prior to redesignation.

EPA finds that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency measures. The maintenance plan SIP revision submitted by Louisiana for BR meets the requirements of section 175A of the Act. Therefore, EPA is proposing to approve the maintenance plan for the BR area for the 1997 8-hour ozone standard as a revision to the Louisiana SIP.

c. Controls to Remain In Effect

Louisiana commits to maintain all of the current emission control measures for VOC and NO<sub>x</sub> after the BR area is redesignated to attainment. Louisiana, through LDEQ's Secretary, has the legal authority and necessary resources to actively enforce against any violations of the State's air pollution emission control rules. After the BR area is redesignated to attainment, LDEQ will implement NSR for major stationary sources and major modifications through the PSD program.

**VI. What is EPA's evaluation of the BR area's motor vehicle emissions budgets?**

*A. What are the transportation requirements for approvable MVEBs?*

A maintenance plan must include a MVEB for transportation conformity purposes. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. It is a process required by section 176(c) of the Act for ensuring that the effects of emissions from all on-road sources are consistent with attainment or maintenance of the standard. EPA's transportation conformity rules at 40 CFR part 93 require that transportation plans, and programs, result in emissions that do not exceed the MVEB established in the SIP. The maintenance plan established an MVEB for 2022, which is the last year of the maintenance plan.

The MVEB is the level of total allowable on-road emissions established by the maintenance plan. Maintenance plans must include the estimates of motor vehicle VOC and NO<sub>x</sub> emissions that are consistent with maintenance of attainment, which then act as a budget or ceiling for the purpose of determining whether transportation plans, and programs conform to the maintenance plan. In this case, the MVEB sets the maximum level of on-road transportation emissions that can be produced, when considered with emissions from all other sources, which

demonstrates continued maintenance of attainment of the 1997 8-hour ozone NAAQS.

*B. What is the status of EPA's adequacy determination?*

When reviewing submitted "control strategy" SIPs or maintenance plans containing a MVEB, EPA determines whether the MVEB contained therein is "adequate" for use in determining transportation conformity. Once EPA finds a budget adequate, the budget must be used by local, state and Federal agencies in determining whether proposed transportation plans and programs "conform" to the SIP as required by section 176(c) of the Act.

EPA's substantive criteria for determining "adequacy" of a MVEB are set out in 40 CFR 93.118(e)(4), which was promulgated in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; transportation conformity rule amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004).

As discussed earlier, Louisiana's maintenance plan submission includes NO<sub>x</sub> and VOC budgets for the year 2022. EPA reviewed the budgets through the adequacy process. The availability of the SIP submission with this 2022 MVEB was announced for public comment on EPA's adequacy Web page on, at: <http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#baton>. The EPA public comment period on the adequacy of the 2022 MVEB for BR closed on April 4, 2011. EPA did not receive any adverse comments on the MVEB. On May 16, 2011, EPA made a finding of adequacy for the 2022 MVEB included in this 8-hour ozone maintenance plan (76 FR 28223).

*C. Is the MVEB approvable?*

Table 8 shows the total projected transportation emissions for 2022, as submitted by Louisiana.

**TABLE 8—PROJECTED TRANSPORTATION EMISSIONS**  
[Tons per avg. ozone season day]

Pollutant	2006	2008	2012	2016	2020	2022
NO <sub>x</sub> .....	29.30	28.35	18.63	12.08	8.33	6.96
VOC .....	17.60	17.82	10.64	9.70	7.82	7.55

These transportation emissions are also represented in Table 7 of this notice as the "mobile" emissions portion of emission inventory data for the BR area.

As shown in Table 8, substantial reductions in both NO<sub>x</sub> and VOC transportation emissions are projected between 2006 and 2022. Further, as

previously stated in this action, EPA finds that the State has demonstrated the future combined emissions levels of NO<sub>x</sub> and VOC in 2008, 2012, 2016,

2020, and 2022 are expected to be similar to or less than the emissions levels in 2006. The projected transportation emissions for 2022 were used by Louisiana as the basis of the 2022 NO<sub>x</sub> and VOC MVEB for the BR area. These emissions are consistent with the maintenance plan demonstrating continued compliance with the 1997 8-hour ozone NAAQS for the 10-year period following redesignation to attainment.

The submitted NO<sub>x</sub> and VOC MVEB for the BR area is defined in Table 9 below.

TABLE 9—NO<sub>x</sub> AND VOC MVEB  
[Summer season tons per day]

Pollutant	2022
NO <sub>x</sub> .....	6.96
VOC .....	7.55

Through this rulemaking, EPA is proposing to approve Louisiana's 2022 MVEB for VOCs and NO<sub>x</sub> for the BR area for transportation conformity purposes, because EPA has determined that the area maintains the 1997 8-hour ozone standard with the emissions at the levels of the budget. The submittal has met the adequacy criteria in 40 CFR 93.118(e)(4), and EPA has completed a comprehensive review of the maintenance plan, concluding that the overall plan demonstrates maintenance, is approvable and the budgets are consistent with the overall plan. Therefore, the budgets can be proposed for approval.

#### VII. What are EPA's proposed actions?

EPA is proposing several related actions under the Act for the BR 1997 8-hour moderate ozone nonattainment area, consisting of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes. Consistent with the Act, EPA is proposing to approve a request from the state of Louisiana to redesignate the BR area to attainment of the 1997 8-hour ozone standard.

In this notice, EPA is also proposing to approve the NO<sub>x</sub> and VOC RACT requirements for the BRNA for the 1-hour and 1997 8-hour ozone standards that accompanied the State's August 10, 2010 redesignation request. In prior separate rulemaking actions, EPA terminated the 1-hour ozone anti-backsliding section 185 penalty fee requirement, and proposed to approve the CTG Rules Update. We are proposing to determine that if EPA finally approves the CTG Rules Update VOC and NO<sub>x</sub> provisions submitted with the redesignation request, the BR

area will meet all of the applicable CAA requirements under section 110 and Part D for purposes of redesignation for the 1997 8-hour ozone NAAQS, including the applicable CAA requirements for a moderate 1997 8-hour ozone area and applicable anti-backsliding requirements for a 1-hour ozone severe area.

Further, EPA is proposing to approve into the SIP, as meeting section 175A and 107(d)(3)(E)(iv) of the Act, Louisiana's maintenance plan for the BR area for the 1997 8-hour ozone NAAQS. The maintenance plan shows maintenance of the standard through 2022. Additionally, EPA is proposing to approve the 2022 MVEB for NO<sub>x</sub> and VOC submitted by Louisiana for the BR area in conjunction with its redesignation request and maintenance plan.

Consequently, EPA is proposing to approve the State's request to redesignate the area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. After evaluating Louisiana's redesignation request, EPA has determined that upon final approval of the above-identified SIP elements and the maintenance plan, the area will meet the redesignation criteria set forth in sections 107(d)(3)(E) and 175A of the Act. The final approval of this redesignation request would change the official designation in 40 CFR part 81 for the BR area from nonattainment to attainment for the 1997 8-hour ozone standard.

#### VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the Clean Air Act for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely do not impose additional requirements beyond those imposed by state law and

the Clean Air Act. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to 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
- Do 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

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: August 16, 2011.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2011-21728 Filed 8-29-11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 110818511-1510-01]

RIN 0648-BB32

#### Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Secretarial Emergency Action

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed temporary rule; request for comments.

**SUMMARY:** NMFS proposes emergency regulations to adjust catch limits in the Northeast Skate Complex Fishery. The proposed action was developed by NMFS to increase the fishing year (FY) 2011 catch limits for the skate fishery, which should extend the fishing season over a longer duration than occurred in FY 2010, thus ensuring a more steady market supply. The proposed increases in catch limits are supported by new scientific information indicating significant increases in skate biomass.

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on September 14, 2011.

**ADDRESSES:** A supplemental environmental assessment (EA) was prepared that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the supplemental EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2011-0197, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal,

first click the “submit a comment” icon, then enter “NOAA-NMFS-2011-0197” in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Fax:** (978) 281-9135, Attn: Tobey Curtis.

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Skate Emergency Action.”

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov>. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Tobey Curtis, Fishery Policy Analyst, (978) 281-9273; fax: (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

In the Northeast U.S., skate fisheries are managed by the New England Fishery Management Council (Council). In 2003, NMFS implemented the Northeast Skate Complex Fishery Management Plan (Skate FMP) to manage a complex of seven skate species: Winter (*Leucoraja ocellata*); little (*L. erinacea*); thorny (*Amblyraja radiata*); barndoor (*Dipturus laevis*); smooth (*Malacoraja senta*); clearnose (*Raja eglanteria*); and rosette (*L. garmani*) (see 68 FR 49693, August 19, 2003). The FMP established biological reference points and overfishing definitions for each species based on abundance indices in the NMFS Northeast Fisheries Science Center bottom trawl survey.

Amendment 3 to the Skate FMP, which was implemented in July 2010, instituted an annual catch limit (ACL)

and accountability measures (AMs) for the skate fishery (75 FR 34049, June 16, 2010), and set fishery specifications for FY 2010-2011 (through April 30, 2012). The ACL was set equal to the acceptable biological catch (ABC) recommendation of the Council’s Scientific and Statistical Committee (SSC) (41,080 mt). Amendment 3 also implemented an annual catch target (ACT), which is 75 percent of the ACL, and annual total allowable landings (TALs) for the skate wing and bait fisheries (TAL = ACT – dead discards and state landings), and three seasonal quotas for the bait fishery. An incidental possession limit may be implemented when landings approach the TAL, preventing excessive quota overages.

In FY 2010, the combination of increased landings of skate wings and a delay in implementation of Amendment 3 possession limits (5,000 lb (2,270 kg) of wings per trip) resulted in the wing fishery reaching the TAL trigger in early September. Consequently, the wing fishery was limited to the incidental possession limit of 500 lb (227 kg) of skate wings per trip from September 3, 2010, through the end of FY 2010 on April 30, 2011.

Asserting that the imposition of the incidental skate wing possession limit so early in the FY caused disruptions in the supply of skate wings, economic hardship on fishing vessels and dealers, and threatened to undermine the market position of U.S. suppliers, members of the skate wing fishing industry requested that the Council consider options to mitigate the potential for this situation to be repeated in FY 2011. In November 2010, the Council initiated Framework 1 to reduce the skate wing possession limits, and increase the TAL trigger point, in order to maximize the duration of the skate fishing season in FY 2011. Framework 1 was partially approved by NMFS and implemented on May 17, 2011 (76 FR 28328).

Since the implementation of Framework 1, new scientific information on skate catch and biomass became available, which allowed the SSC to revise its recommendation for skate ABC. The ABC is calculated by multiplying the median catch/biomass ratio by the most recent 3-yr average skate biomass. Therefore, significant increases in the survey biomass of little and winter skates through autumn 2010 support increases in the ABC.

Additionally, new research on the discard mortality of winter and little skates in trawl gear indicates that the assumed discard mortality rate of 50 percent is too high, and that the dead discard portion of the catch has been overestimated in the past. Updates to