6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R06-OAR-2016-0293; FRL-9954-35-Region 6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Louisiana; Redesignation of Baton Rouge Nonattainment Area, 2008 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 2, 2016, the State of Louisiana submitted a request for the Environmental Protection Agency (EPA) to redesignate the five-parish Baton Rouge Nonattainment Area (BRNA or Area) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or standard) to attainment and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the area. EPA is proposing to determine that the BRNA is continuing to attain the 2008 ozone NAAQS; to approve into the SIP the State's plan for maintaining attainment of the standard in the Area, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NOx) and volatile organic compounds (VOC) for the years 2022 and 2027; and to redesignate the BRNA to attainment for the standard.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2016-0293, at *http://www.regulations.gov* or via email to *jacques.wendy@epa.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Wendy Jacques, (214) 665-7395, *jacques.wendy@epa.gov*. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Wendy Jacques, (214) 665-7395, *jacques.wendy@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Ms. Jacques or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" is used, we mean the EPA.

I. What are EPA's Proposed Actions?

EPA is proposing to take the following three separate but related actions, one of which involves multiple elements: (1) to determine that the BRNA continues to attain the 2008 ozone NAAQS;[1] (2) to approve into the SIP, Louisiana's plan for maintaining the 2008 ozone NAAQS (maintenance plan), including the associated MVEBs for the BRNA; and (3) to redesignate the BRNA to attainment for the 2008 ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the MVEBs for the BRNA. The BRNA is comprised of five parishes that make up the historical metropolitan statistical area: Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. Today's proposed actions are summarized below and described in greater detail throughout this notice of proposed rulemaking.

EPA is proposing to approve Louisiana's maintenance plan for the BRNA as meeting the requirements of section 175A [such approval being one of the Clean Air Act (CAA or Act) criteria for redesignation to attainment status]. The maintenance plan is designed to keep the BRNA in attainment of the 2008 ozone NAAQS through 2027. The maintenance plan includes 2022 and 2027 MVEBs for NOx and VOC for the BRNA for transportation conformity purposes. EPA is proposing to approve these MVEBs and incorporate them into the Louisiana SIP.

EPA also proposes to determine that the BRNA has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, in this action, EPA is proposing to approve a request to change the legal designation of the BRNA, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 ozone NAAQS.

[1] On May 4, 2016, we determined that the BRNA had attained the ozone NAAQS, by the applicable attainment date of July 20, 2015, based on 2012-2014 monitoring data. *See* 81 FR 26697.

EPA is also notifying the public of the status of EPA's adequacy process for the 2022 and 2027 NOx and VOC MVEBs for the BRNA. The Adequacy comment period began on May 6, 2016, with EPA's posting of the availability of Louisiana's submissions on EPA's Adequacy website (http://www3.epa.gov/otaq/stateresources/transconf/currsips.htm). The Adequacy comment period for these MVEBs closed on June 6, 2016. No comments, adverse or otherwise, were received during the Adequacy comment period. Please see section VII of this proposed rulemaking for further explanation of this process and for more details on the MVEBs.

In summary, today's notice of proposed rulemaking is in response to Louisiana's May 2, 2016, redesignation request and associated SIP submission that address the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the BRNA to attainment for the 2008 ozone NAAQS.

II. What is the Background for EPA's Proposed Actions?

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is equal to or greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix P of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of complete, quality assured, and certified ambient air quality data at the conclusion of the designation process. The BRNA was designated nonattainment for the 2008 ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, the BRNA was classified as a marginal nonattainment area for the 2008 ozone NAAQS. In the final implementation rule for the 2008 ozone NAAQS (SIP Implementation Rule),[2] EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This rule established an attainment date three years after the July 20, 2012, effective date of designation for areas classified as marginal for the 2008 ozone nonattainment designations.[3] Therefore, the BRNA's attainment date was July 20, 2015.

III. What are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing 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 section 110(k); (3) the

[2] This rule, entitled Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements and published at 80 FR 12264 (March 6, 2015), addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress, RACT, reasonably available control measures, major NSR, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that apply when the 1997 ozone NAAQS are revoked.

[3] The SIP Implementation Rule modified 40 CFR 51.1103 to establish attainment dates that run from the effective date of designation, *i.e.*, July 20, 2012. This action was in response to the D.C. Circuit's decision in *NRDC v. EPA* (D.C. Cir. No. 12-1321) (Dec. 23, 2014). The Court's decision held "that the EPA's decision to run the attainment periods from the end of the calendar year in which areas were designated was unreasonable." 80 FR 12264, at 12268.

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 section 175A; and, (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (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, Director, Technical Support Division, 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 (hereafter referred to as the "Calcagni Memorandum");

5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) 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 H. 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.

IV. Why is EPA Proposing These Actions?

On May 2, 2016, the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), requested that EPA redesignate the BRNA to attainment for the 2008 ozone NAAQS. EPA's evaluation indicates that the entire BRNA has attained the 2008 ozone NAAQS, and that the BRNA meets the requirements for redesignation as set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result, EPA is proposing to take the three related actions summarized in section I of this notice.

V. What is EPA's Analysis of the Request?

Our analysis of the State's request with respect to the five redesignation criteria provided under CAA section 107(d)(3)(E) is discussed in the following paragraphs of this section.

Criteria (1) - *The BRNA has attained the 2008 ozone NAAQS.*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). For ozone, an area may be considered to be attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and Appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the 2008 ozone NAAQS, the 3-year average of the fourth-highest daily maximum average ozone concentrations measured at each monitor within an area over each year must not exceed 0.075 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix P, the 2008 ozone NAAQS are attained if the design value is 0.075 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at

the same location for the duration of the monitoring period required for demonstrating attainment.

EPA is proposing to determine that the BRNA is continuing to attain the 2008 ozone NAAQS. EPA reviewed ozone monitoring data from monitoring stations in the BRNA for the 2008 8-hour ozone NAAQS for 2011-2015, and the design values for each monitor in the Area are less than 0.075 ppm. These data have been quality-assured, are recorded in AQS, and indicate that the Area is attaining the 2008 ozone NAAQS. The fourth-highest 8-hour ozone values at each monitor for 2011, 2012, 2013, 2014, 2015, and the 3-year averages of these values (i.e., design values), are summarized in Table 1, below.

Table 1. 2011 – 2015 Design Value Concentrations for the BRNA

Site	4th Highest 8-hour Ozone Value (ppm)					3-Year Design Values (ppm)		
	2011	2012	2013	2014	2015	2011-2013	2012-2014	2013-2015
Plaquemine	0.079	0.074	0.061	0.061	0.069	0.071	0.065	0.063
Carville	0.084	0.073	0.068	0.068	0.075	0.075	0.069	0.070
Dutchtown	0.080	0.071	0.062	0.069	0.074	0.071	0.067	0.068
LSU	0.083	0.075	0.067	0.075	0.073	0.075	0.072	0.071
Port Allen	0.074	0.070	0.060	0.066	0.066	0.068	0.065	0.064
Pride	0.075	0.070	0.062	0.068	0.062	0.069	0.066	0.064
French Settlement	0.077	0.071	0.069	0.073	0.070	0.072	0.071	0.070
Capitol	0.080	0.072	0.066	0.070	0.069	0.072	0.069	0.068

The 3-year design value for 2011-2013 for the BRNA is 0.075 ppm,[4] which meets the 2008 ozone NAAQS. Further, quality assured data shows the 2012-2014 design value for the BRNA has decreased to 0.072 ppm and the 2013-2015 design value for the BRNA has decreased to 0.071 ppm. In today's action, EPA is proposing to determine that the BRNA is continuing to attain the 2008 ozone NAAQS. EPA will not take final action to approve the redesignation if the 3-year design value exceeds the NAAQS prior to EPA finalizing the redesignation. As discussed

[4] The monitor with the highest 3-year design value is considered the design value for the BRNA.

in more detail below, the State of Louisiana has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

Criteria (2) – *Louisiana has a fully approved SIP under section 110(k) for the BRNA*; and

Criteria (5) – *Louisiana has met all applicable requirements under section 110 and part D of title I of the CAA.*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Louisiana has met all applicable SIP requirements for the BRNA under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Louisiana SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the 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).

a. *The BRNA has met all applicable requirements under section 110 and part D of the CAA.*

General SIP requirements. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (Nonattainment NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. *See* 75 FR 2091, January 14, 2010.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, 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, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

Title I, Part D, applicable SIP requirements. Section 172(c) of the CAA sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the area's nonattainment classification. As provided in Subpart 2, the specific requirements of section 182(a) apply in lieu of the demonstration of attainment (and contingency measures) required by section 172(c). 42 U.S.C. 7511a(a). A thorough discussion of the requirements contained in sections 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 182(a) Requirements. Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NOx emitted within the boundaries of the ozone nonattainment area. Louisiana provided an emissions inventory for the BRNA to EPA in this SIP submission. On July 5, 2016, EPA published a direct final rule to approve this emissions inventory into the SIP. *See* 81 FR 43490.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) that were required under section 172(b)(3) of the CAA (and related guidance) prior to the 1990 CAA amendments. The BRNA is subject to the section 182(a)(2) RACT "fix up" and has been approved (59 FR 23166, May 5, 1994).

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented, or was required to implement, an inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision providing for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the amendments, whichever is more stringent. The BRNA is subject to the section 182(a)(2)(B) and does have an approved I/M program (71 FR 66113, November 13, 2006).

Regarding the permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Louisiana does have an approved part D NSR program in place (62 FR 52948, October 10, 1997). However, 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 NAAQS without part D NSR, because PSD requirements

will apply after redesignation. A more detailed 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 Requirements for Areas Requesting Redesignation to Attainment." Louisiana's PSD program will automatically become applicable in the BRNA upon redesignation to attainment. *See* Louisiana Regulations Title 33, Part III, Chapter 5, section 504 that is part of the SIP.

Section 182(a)(3) requires states to submit periodic inventories and emissions statements. Section 182(a)(3)(A) requires states to submit a periodic inventory every three years. As discussed below in the section of this notice titled Criteria (4)(e), *Verification of Continued Attainment*, the State will continue to update its emissions inventory at least once every three years. Under section 182(a)(3)(B), each state with an ozone nonattainment area must submit a SIP revision requiring emissions statements to be submitted to the state by sources within that nonattainment area. Louisiana provided a SIP revision to EPA on March 3, 1993, addressing the section 182(a)(3)(B) emissions statements requirement, and on January 6, 1995, EPA published a final rule to approve this SIP revision. *See* 60 FR 2014.

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 that are developed, funded, or approved under title 23 of the United States Code and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations

relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements[5] as not applying for purposes of evaluating a 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) (redesignation of Tampa, Florida). Nonetheless, Louisiana has an approved conformity SIP. *See* 71 FR 63247 (October 30, 2006). EPA proposes that the BRNA has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

b. The BRNA has a fully approved applicable SIP under section 110(k) of the CAA.

EPA has fully approved the applicable Louisiana SIP for the BRNA under section 110(k) of the CAA for all requirements applicable 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). Louisiana has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various SIP elements applicable for the ozone NAAQS. *See e.g.* 76 FR 74000, November 15, 2011.

[5] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. EPA has approved all part D requirements applicable for purposes of this redesignation.

Criteria (3) - ***The air quality improvement in the BRNA is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.***

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA has preliminarily determined that Louisiana has demonstrated that the observed air quality improvement in the BRNA is due to permanent and enforceable reductions in emissions resulting from Federal measures and from state measures adopted into the SIP. EPA does not have any information to suggest that the decrease in ozone concentrations in the BRNA is due to unusually favorable meteorological conditions.

Federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. The Federal measures that have been implemented include the following:

Tier 2 vehicle and fuel standards. Implementation began in 2004 in phases and requires all passenger vehicles in any manufacturer's fleet to meet an average standard of 0.07 grams of

NOx per mile. In January 2006 the sulfur content of gasoline was required to be on average 30 ppm which assists in lowering the NOx emissions (65 FR 6698, February 10, 2000).[6]

Large non-road diesel engines rule. This rule was promulgated in 2004, and was phased in between 2008 through 2014 (69 FR 38958, June 29, 2004). This rule reduces the sulfur content in the nonroad diesel fuel, and also reduces NOx, VOC, particulate matter, and carbon monoxide emissions. These emission reductions are federally enforceable. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NOx emissions from non-road diesel engines by up to 90 percent nationwide.

Heavy-duty gasoline and diesel highway vehicle standards. EPA issued this rule in January 2001 (66 FR 5002). This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase of the rule took effect in 2007, which further reduced the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NOx and VOC emissions. EPA expects that this rule will achieve a 95 percent reduction in NOx emissions from diesel trucks and buses and will reduce NOx emissions by 2.6 million tons by 2030 when the heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards.[7]

Nonroad spark-ignition engines and recreational engines standards. The nonroad spark-ignition and recreational engine standards, effective in January 2003, regulate NOx, hydrocarbons, and carbon monoxide from groups of previously unregulated nonroad engines (67

[6] Louisiana also identified Tier 3 Motor Vehicle Emissions and Fuel Standards as a federal measure. EPA issued this rule in April 28, 2014, which applies to light duty passenger cars and trucks. EPA promulgated this rule to reduce air pollution from new passenger cars and trucks beginning in 2017. Tier 3 emission standards will lower sulfur content of gasoline and lower the emissions standards.

[7] 66 FR 5002, 5012 (January 18, 2001).

FR 68242, November 8, 2002). These engine standards apply to large spark-ignition engines (e.g., forklifts and airport ground service equipment), recreational vehicles (e.g., off-highway motorcycles and all-terrain-vehicles), and recreational marine diesel engines sold in the United States and imported after the effective date of these standards. When all of the nonroad spark-ignition and recreational engine standards are fully implemented, an overall 72 percent reduction in hydrocarbons, 80 percent reduction in NOx, and 56 percent reduction in carbon monoxide emissions are expected by 2020. These controls reduce ambient concentrations of ozone, carbon monoxide, and fine particulate matter.

National program for greenhouse gas (GHG) emissions and fuel economy standards. The federal GHG and fuel economy standards apply to light-duty cars and trucks in model years 2012-2016 (phase 1) (75 FR 25324, May 7, 2010) and 2017-2025 (phase 2) (proposed at 80 FR 40138, July 13, 2015). The final standards are projected to result in an average industry fleet-wide level of 163 grams/mile of carbon dioxide which is equivalent to 54.5 miles per gallon if achieved exclusively through fuel economy improvements. The fuel economy standards result in less fuel being consumed, and therefore less NOx emissions released.

Point Sources. In the submittal Louisiana noted their adoption of a NOx control rule that was approved by EPA (76 FR 38977, July 5, 2011). Additionally, we note that RACT controls were implemented in the area for the 1997 ozone NAAQS (76 FR 74000, November 30, 2011 and 76 FR 75467, December 2, 2011).

Criteria (4) - *The BRNA has a fully approved maintenance plan pursuant to section 175A of the CAA.*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the BRNA to attainment for the 2008 ozone NAAQS, LDEQ submitted a SIP revision to provide for the maintenance of the 2008 ozone NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as necessary to assure prompt correction of any future violations of the 2008 ozone NAAQS. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.[8] As is discussed more fully below, EPA is proposing to determine that Louisiana's

[8] Procedures for Processing Requests to Redesignate Areas to Attainment, Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992.

maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Louisiana SIP.

b. Attainment Emissions Inventory

EPA is proposing to determine that the BRNA has attained the 2008 ozone NAAQS based on quality-assured monitoring data for the 3-year period from 2011-2013, and is continuing to attain the standard based on 2012-2014 and 2013-2015 data. Louisiana selected 2011 as the base year (i.e., attainment emissions inventory year) for developing a comprehensive emissions inventory for NOx and VOC, for which projected emissions could be developed for 2022 and 2027. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2008 ozone NAAQS. Louisiana began development of the attainment inventory by first generating a baseline emissions inventory for the State's portion of the BRNA. The projected emission inventories have been estimated using projected rates of growth in population, traffic, economic activity, and other parameters. In addition to comparing the final year of the plan (2027) to the base year (2011), Louisiana compared an interim year to the baseline to demonstrate that this year is also expected to show continued maintenance of the 2008 ozone standard.

The emissions inventory is composed of four major types of sources: nonroad, onroad, nonpoint and point. The complete descriptions of how the inventories were developed are discussed in the Appendix F and Appendix K of the May 2, 2016, submittal, which can be found in the docket for this action. The 2011 NOx and VOC emissions for the BRNA, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Table 2 of the following subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The maintenance plan associated with the redesignation request includes a maintenance demonstration that:

(i) Shows compliance with and maintenance of the 2008 ozone NAAQS by providing information to support the demonstration that current and future emissions of NOx and VOC remain at or below 2011 emissions levels.

(ii) Uses 2011 as the attainment year and includes future emissions inventory projections for 2022 and 2027.

(iii) Identifies an "out year" at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NOx and VOC MVEBs were established for 2022 and 2027 (see section VII below).

(iv) Provides actual (2011) and projected emissions inventories, in tons per day (tpd), for the BRNA, as shown in Table 2, below.

On July 5, 2016, we approved the BRNA 2011 Base Year Emissions Inventory (EI) for the 2008 8 Hour NAAQS. *See* 81 FR 43490. LDEQ developed projected EIs for the years 2022 and 2027 using the 2011 EI (Table 2). The projected emissions for 2022 and 2027 indicate that ozone precursor emissions in the BRNA will remain below those in the attainment year inventory for the duration of the maintenance plan. While LDEQ projected an increase in NOx and VOC emissions from the nonpoint source sector, they projected that the increases from this sector would be offset from reductions in the nonroad mobile and onroad mobile source sectors. LDEQ 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 (from all sources, collectively) continue the downward trend considering all emission sources.

Table 2. Summary of 2011 and Future NOx and VOC Emissions (tpd) for the BRNA

Sector	2011		2022		2027		Δ 2011–2027	
	NOx	**VOC**	**NOx**	**VOC**	**NOx**	**VOC**	**NOx**	**VOC**
Nonpoint	17.1	82.6	17.9	90.5	17.9	92.7	0.8	10.1
Nonroad	27.3	8.7	12.6	6.5	15.2	6.1	-12.1	-2.6
Onroad	38.4	19.2	14.4	13.0	11.0	11.4	-27.4	-7.8
Point	74.2	33.6	74.2	33.6	74.2	33.6	0.0	0.0
Total	**157.0**	**144.0**	**119.0**	**143.5**	**118.2**	**143.6**	**-38.8**	**-0.4**

d. Monitoring Network

There currently are 8 monitors measuring ozone in the BRNA. The State of Louisiana, through LDEQ, has committed to continue operation of the monitors in the BRNA throughout the maintenance period in compliance with 40 CFR part 58.

e. Verification of Continued Attainment

The State of Louisiana, through LDEQ, has the legal authority to enforce and implement the maintenance plan for the BRNA. 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.

LDEQ 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 from all sources in the area using the latest emissions factors, models, and methodologies. LDEQ 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.

Additionally, under the Air Emissions Reporting Requirements (AERR), LDEQ is required to develop a comprehensive, annual, statewide emissions inventory every three years that is due twelve to eighteen months after the completion of the inventory year. As noted above, LDEQ 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 (from all sources, collectively) continue the downward trend.

f. Contingency Measures in the Maintenance Plan.

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, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented.

The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The trigger of the contingency plan will be a violation of the 2008 ozone NAAQS (i.e., when the three-year average of the 4th highest values is equal to or greater than 0.075 ppm at a monitor in the Area).

Once a trigger is activated, the LDEQ has committed to adopt additional measures, if LDEQ determines that the violations are caused by sources within the State, 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 NOx control rule in LAC 33:III.2202 to include the months of April and October each year (currently Chapter 22 applies from May 1 to September 30). This would assist in reducing incidences of high ozone days in the BRNA. In addition, the state will consider other measures such as lowering the NOx emission 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;
- Employer-based transportation management plans;
- Anti-backsliding ordinances; and
- Programs to limit or restrict vehicle use in areas of high emissions concentration during periods of peak use.

Given the substantial amount of industrial emissions in the BRNA, and the fact the Area's ozone problem is mostly driven by NOx emissions, these potential contingency measures would be appropriate for adequately correcting an attainment problem.

EPA proposes to conclude that the maintenance plan adequately addresses the five basic components of a maintenance plan: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

Therefore, EPA proposes that the maintenance plan SIP revision submitted by Louisiana for the BRNA meets the requirements of section 175A of the CAA and is approvable.

VI. What is EPA's Analysis of Louisiana's Proposed NOx and VOC MVEBs for the Baton Rouge Area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. 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 or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs, including maintenance plans, create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total

allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

As part of the interagency consultation process on setting MVEBs, LDEQ held discussions to determine what years to set MVEBs for the BRNA maintenance plan. According to the transportation conformity rule, a maintenance plan must establish MVEBs for the last year of the maintenance plan (in this case, 2027). *See* 40 CFR 93.118. Louisiana also provided MVEBs for 2022. Table 3 below provides the NOx and VOC MVEBs in tpd for 2022 and 2027, as reflected in Section 9, Tables 9.1 and 9.2 of the State's submittal.

Table 3. Baton Rouge MVEBs (tpd)

Year	NOx	VOC
2022	14.37	13.19
2027	10.95	11.55

Through this rulemaking, EPA is proposing to approve the MVEBs for NOx and VOC for 2022 and 2027 for the Baton Rouge Area because EPA believes that the Area maintains the 2008 ozone NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the BRNA are approved, they must be used for future conformity determinations.

VII. What is the Status of EPA's Adequacy Determination for the Proposed NOx and VOC MVEBs for the BRNA?

EPA found the BRNA MVEBs adequate for transportation conformity purposes effective July 14, 2016, *see* 81 FR 42350 (June 29, 2016). The MVEB must be used by state and Federal

agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and $PM_{2.5}$ 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). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

VIII. What is the Effect of EPA's Proposed Actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Louisiana's redesignation request would change the legal designation of the BRNA as found at 40 CFR part 81, from nonattainment to attainment for the 2008 ozone NAAQS. Approval of Louisiana's associated SIP revision would also incorporate a plan for maintaining the 2008 ozone NAAQS in the BRNA through 2027 into the SIP. This maintenance plan includes contingency measures to remedy any future violations

of the 2008 ozone NAAQS and procedures for evaluation of potential violations. The maintenance plan also establishes NOx and VOC MVEBs for 2022 and 2027 for the Baton Rouge Area. The MVEBs are listed in Table 5 in section VI. Additionally, EPA is notifying the public of the status of EPA's adequacy determination for the newly-established NOx and VOC MVEBs for 2022 and 2027 for the Baton Rouge Area.

IX. Proposed Actions

EPA is proposing three separate but related actions regarding the redesignation and maintenance of the 2008 ozone NAAQS for the BRNA. EPA is proposing to determine that the BRNA is attaining the 2008 ozone NAAQS. EPA is also proposing to approve the maintenance plan for the BRNA, including the NOx and VOC MVEBs for 2022 and 2027, into the Louisiana SIP (under CAA section 175A). The maintenance plan demonstrates that the Area will continue to maintain the 2008 ozone NAAQS through 2027 and that the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today's action, EPA is describing the status of its adequacy determination for the NOx and VOC MVEBs for 2022 and 2027 in accordance with 40 CFR 93.118(f)(2). Within 24 months from the effective date of EPA's adequacy determination for the MVEBs or the publication date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NOx and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

Additionally, EPA is proposing to determine that the BRNA has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2008 ozone NAAQS. On this basis, EPA is proposing to approve Louisiana's redesignation request for the BRNA. If finalized, approval of the redesignation request would change the official

designation of the portion of BRNA, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 ozone NAAQS.

X. Statutory and Executive Order Reviews

Under the CAA, 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 CAA 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. *See* 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 CAA. Accordingly, these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these proposed actions:

- are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 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 significant regulatory actions 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 CAA; 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 the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, 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: October 27, 2016.

Samuel Coleman,
Acting Regional Administrator, Region 6.

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