



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2019-0211; FRL-10005-69-Region 6]

Air Plan Approval; Louisiana; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the EPA is proposing to approve elements of two State Implementation Plan (SIP) submittals from Louisiana for the 2015 ozone (O₃) National Ambient Air Quality Standards (NAAQS). The submittals address how the existing SIP provides for the implementation, maintenance and enforcement of the 2015 ozone NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Louisiana SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS.

DATES: Written 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 Number EPA-R06-OAR-2019-0211, at <http://www.regulations.gov> or via email to fuerst.sherry@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 Sherry Fuerst, 214-665-6454, fuerst.sherry@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, 1201 Elm Street, Suite 500, 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: Sherry Fuerst, 214-665-6454, fuerst.sherry@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Fuerst 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. Background

Under section 109 of the CAA, EPA establishes NAAQS to protect human health and public welfare. On October 26, 2015, the EPA revised the primary and secondary 8-hour ozone NAAQS from 0.075 ppm to 0.070 ppm to provide increased protection of public health and the environment (80 FR 65291). The primary standards are set to protect human health, while secondary standards are set to protect public welfare.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an “infrastructure SIP” or “i-SIP”. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.¹ We are following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.² The EPA has other CAA authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

The State of Louisiana’s i-SIP certification, submitted on February 7, 2019, and the certification submitted on November 8, 2019, intend to demonstrate how the existing Louisiana SIP meets the applicable CAA section 110(a)(2) requirements for the 2015 ozone NAAQS. Our

¹ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA’s prior action on Louisiana’s infrastructure SIP to address the 2006 PM_{2.5}, 2008 Pb, 2008 O₃, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS (81 FR 68322, October 4, 2016).

² See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933, 16-17 (August 30, 2018) (Potential problems with actual implementation are “better addressed at a different time” via specific provisions set forth in the Clean Air Act).

technical evaluation of these submittals is provided in the Technical Support Document (TSD) for this action.³

II. The EPA's Evaluation of Louisiana's i-SIP

The State's submissions on dated February 7, 2019 and November 8, 2019 are intended to demonstrate how the existing Louisiana SIP meets the infrastructure requirements for the 2015 ozone NAAQS. The February 7, 2019 submission addresses most elements pertaining to CAA section 110(a)(2) requirements for the 2015 ozone NAAQS, while the November 8, 2019 submission focuses on Section 110(a)(2)(D) requirements for the 2015 ozone NAAQS. We are not evaluating or proposing action on portions of the submissions pertaining to 110(a)(2)(D)(i) as described below. As mentioned in the previous section, a detailed discussion of our evaluation can be found in the TSD for this action, accessible through www.regulations.gov (Docket No. EPA-R06-OAR-2019-0211). Below is a summary of the EPA's evaluation of the Louisiana i-SIP for each applicable element of 110(a)(2)(A) through (M).

(A) Emission limits and other control measures: The CAA section 110(a)(2)(A) requires the SIP to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act and other related matters as needed to implement, maintain and enforce each of the NAAQS.⁴

³ The TSD for this action can be accessed through www.regulations.gov (Docket No. EPA-R06-OAR-2019-0211).

⁴ The specific nonattainment area plan requirements of CAA section 110(a)(2)(I) are subject to the timing requirements of CAA section 172, not the timing requirement of CAA section 110(a)(1). Thus, CAA section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2015 ozone NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of CAA section 110(a)(2)(A). In the context of an infrastructure SIP, the EPA is not evaluating the existing SIP provisions for this purpose. Instead, the EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

The Louisiana Air Control Law found in the Louisiana Environmental Quality Act at Louisiana Revised Statutes (Louisiana Revised Statutes 30:2054 (La R.S. 30:2054)) provides the Secretary of the Louisiana Department of Environmental Quality (LDEQ) with broad legal authority. The Secretary can adopt emission standards and compliance schedules which are applicable to regulated entities; emission standards and limitations; and any other measures necessary for attainment and maintenance of national standards. The Secretary can also enforce applicable laws, regulations, standards and compliance schedules, and seek injunctive relief. This authority has been employed in the past to adopt and submit multiple revisions to the Louisiana SIP. The approved SIP for Louisiana is documented at 40 CFR part 52.970, Subpart T.⁵ LDEQ's air quality rules and standards are codified at Title 33, Part III of the Louisiana Administrative Code (LAC 33:III). As detailed in our TSD, numerous parts of the regulations codified into LAC 33:III necessary for implementing and enforcing the NAAQS have been adopted into the SIP.⁶

The EPA is therefore proposing to find that the Louisiana SIP meets the requirements of section 110(a)(2)(A) of the CAA with respect to the 2015 ozone NAAQS.

(B) Ambient air quality monitoring/data system: Section 110(a)(2)(B) of the CAA requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

La R.S. 30:2011(C)(1)(b) provides LDEQ with the authority to collect air quality monitoring data, quality-assure the results, and report the data. LAC 33:III.709 outlines the procedures for the measurement of concentrations of the NAAQS. LDEQ maintains and operates

⁵ <http://www.ecfr.gov/cgi-bin/text-idx?SID=6e98cdf87e1b896da1b0a8cc2d2f69d6&mc=true&node=sp40.3.52.t&rgn=div6>.

⁶ See the TSD for additional information.

a monitoring network to measure levels of the pollutants in accordance with EPA regulations specifying siting and monitoring requirements. All monitoring data is measured using EPA approved methods and is subject to the EPA quality assurance requirements. LDEQ submits all required data to EPA, consistent with EPA regulations. The monitoring network plan was approved into the SIP and it undergoes recurrent annual review by EPA.⁷ In addition, LDEQ conducts a recurrent assessment of its monitoring network every five years, as required by EPA rules. The most recent of these 5-year monitoring network assessments was conducted by LDEQ and approved by EPA.⁸ The LDEQ website provides the monitor locations and posts past and current concentrations of criteria pollutants measured in the State's network of monitors.⁹

In summary, Louisiana meets the requirements to: establish, operate, and maintain an ambient air monitoring network; collect and analyze the monitoring data; and make the data available to the EPA upon request. The EPA is proposing to find that the current Louisiana SIP meets the requirements of CAA section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

(C) Program for enforcement of control measures: The SIP must include the following three elements: (1) A program providing for enforcement of the measures in CAA section 110(a)(2)(A); (2) a minor new source review (NSR) program for the regulation of new and modified minor stationary sources and minor modifications of new major stationary sources as necessary to protect the applicable NAAQS; and (3) a major stationary source permit program to meet the prevention of significant deterioration (PSD) permitting requirements of the CAA (for

⁷ A copy of the 2019 Annual Air Monitoring Network Plan and EPA's approval letter, October 21, 2019, are included in the docket for this proposed rulemaking.

⁸ A copy of LDEQ's 2015 5-year ambient monitoring network assessment and EPA's approval letter, July 5, 2016, are included in the docket for this proposed rulemaking.

⁹ See <http://airquality.deq.louisiana.gov/>.

areas designated as attainment or unclassifiable for the NAAQS in question). Each of these elements is described in more detail in the TSD for this action.

(1) *Enforcement of SIP Measures.* The state must provide a program for enforcement of the necessary control measures described in subparagraph (A). As noted earlier, the Louisiana Revised Statutes and implementing regulations in the Louisiana Administrative Code (LAC 33:III Chapters 1, 5-7, 9, 11, 13-15 and 21-23) provide authority for the LDEQ, and its Secretary, to enforce the requirements of the LAC, and any regulations, permits, or final compliance orders. These Louisiana Revised Statutes and implementing regulations in the Louisiana Administrative Code also provide the LDEQ with general enforcement powers. Among other things, the La R. S. grants authority to the LDEQ to file lawsuits to compel compliance with the statutes and regulations; commence civil actions; conduct investigations of regulated entities; collect criminal and civil penalties; develop and enforce rules and standards related to protection of air quality; issue compliance orders; pursue criminal prosecutions; investigate, enter into remediation agreements; and issue emergency cease and desist orders. The LAC also provides additional enforcement authorities and funding mechanisms.

(2) *Minor New Source Review.* The SIP is required to include measures to regulate construction and modification of minor stationary sources and minor modifications to major stationary sources to protect the NAAQS. As detailed in the TSD, the Louisiana minor NSR permitting requirements are approved as part of the SIP at 30 LAC Chapter 5.¹⁰

¹⁰ In specifically approving this i-SIP element, we note that EPA is not opening up for action any provisions in the existing Louisiana minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C (e.g., 76 FR 41076-41079, July 13, 2011). Louisiana submitted a SIP revision on April 20, 2011. The revision was acted on and approved into the SIP on August 4, 2016 (81 FR 51341). The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs.

(3) Prevention of Significant Deterioration (PSD) permit program. The Louisiana PSD portion of the SIP covers all NSR regulated pollutants as well as the requirements for the 2015 O₃ NAAQS.¹¹

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(C) are met.

(D) Interstate transport, and interstate and international pollution abatement: CAA section 110(a)(2)(D) has two primary parts; section 110(a)(2)(D)(i) and (ii). Section 110(a)(2)(D)(i) has four sub-elements addressing interstate transport of emissions as described below.

Section 110(a)(2)(D)(i)(I):

Sub-element 1 requires the SIP must prohibit emissions within Louisiana from contributing significantly to the nonattainment of the NAAQS in other states, and;

Sub-element 2 requires the SIP prohibit emissions within Louisiana from interfering with the maintenance of the NAAQS in other states.

Section 110(a)(2)(D)(i)(II):

Sub-element 3 requires the SIP must prohibit emissions within Louisiana from interfering with measures required to prevent significant deterioration in other states and;

Sub-element 4 requires the SIP must prohibit emissions within Louisiana from interfering with measures required to protect visibility in other states.

¹¹ As discussed further in the TSD.

CAA 110(a)(2)(D)(ii) requires that states comply with the requirements listed in sections 126 of the CAA which is designed to aid in the abatement of interstate pollution and 115 of the CAA which were designed to aid in the abatement of international pollution. Section 115 authorizes the Administrator to require a state to revise its SIP under certain conditions to alleviate international transport into another country. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. Section 126(b) provides that any state or political subdivision may petition the Administrator for a finding that a major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(ii) after public hearing. CAA 126(b) and (c) could occur if (1) the Administrator has, in response to a petition, made a finding under section 126(b) that emissions from a source or sources within the air agency's jurisdiction emit prohibited amounts of air pollution relevant to the new or revised NAAQS for which the infrastructure SIP is being made; and (2) under section 126(c), the Administrator has required the source or sources to cease construction, cease or reduce operations, or comply with emissions limitations and compliance schedule requirements for continued operation.

At this time, we are proposing approval that the SIP meets the requirements sub-element 3 of Section 110(a)(2)(D)(i)(I). We are also proposing approval that the SIP meets the requirements in 110(a)(2)(D)(ii), for both the interstate and international pollution abatement provisions. We plan to act on the remaining sub-elements of Section 110(a)(2)(D)(i)(I) in separate actions.

For 110(a)(2)(D)(i)(II), Louisiana has EPA-approved PSD SIP provisions which will limit Louisiana emissions from new major sources or major modifications, which will help ensure that Louisiana will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other states in the future. As we have approved the Louisiana

comprehensive PSD program, we propose to approve that the current SIP meets CAA section 110(a)(2)(D)(i)(II) sub-element 3 requirements.

CAA section 110(a)(2)(D)(ii) requires that the SIP contain adequate provisions insuring compliance with the applicable requirements of section 126 (relating to interstate pollution abatement) and section 115 (relating to international pollution abatement). As stated in their submittal, Louisiana meets the section 126 requirements as (1) they have a fully approved PSD SIP (81 FR 74923, October 28, 2016), which includes notification to neighboring air agencies of potential impacts from each new or modified major source, and (2) no source or sources have been identified by the EPA as having any interstate impacts under CAA section 126 in any pending action related to any air pollutant.

There are no findings under section 115 of the CAA against Louisiana with respect to the 2015 ozone NAAQS.

Based upon our review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(D)(ii) are met.

(E) Adequate authority, resources, implementation, and oversight: CAA section 110(a)(2)(E) requires that the SIP provide for the following: (1) necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) compliance with requirements relating to state boards as required under section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on

local governments or other entities to carry out that portion of the plan. Both subsections A and E of this action address the requirement that there is adequate authority and no legal impediments to implement and enforce the SIP.

The i-SIP submissions for the 2015 ozone NAAQS describe the SIP regulations governing the various functions of personnel within the LDEQ, including the administrative, technical support, planning, enforcement, and permitting functions of the program.

The duties, powers and structure of the LDEQ (described at La R.S. 30:2011.F) provide that “the basic personnel [***] shall be employed or provided by the department.” and the LDEQ may contract, employ, and compensate such assistance on a full or part-time basis as may be necessary to carry out the provisions of this Subtitle. In addition, the State has the Environmental Trust Fund, established at La R.S. 30:2015, which is used, in part, to “defray the cost to the State of permitting, monitoring, * * * maintaining and administering the programs provided for under the Louisiana Environmental Quality Act.”

There are Federal sources of funding for the implementation of the NAAQS, for example the CAA sections 103 and 105 provide grant funds. The LDEQ receives Federal funds on an annual basis, under sections 103 and 105 of the Act, to support its air quality programs. Fees collected for motor vehicle inspections, non-Title V permit programs, and other inspections, maintenance and renewals required of other air pollution sources also provide necessary funds to help implement the State’s air programs. Information on permitting fees is provided in the discussion for 110(a)(2)(L) below. The Secretary has the power and duty “to receive and budget duly appropriated monies and to accept, receive, and administer grants or other funds or gifts from public and private agencies, including the Federal government to carry out the provisions and purposes of this Subtitle.” (La R.S. 30:2011.D.10). The SIP approved rule at 33 LAC

Chapter 1, section 101 describes the LDEQ as the State's air pollution control agency and describes its enforcement authority, referencing the 1983 Louisiana Environmental Quality Act (54 FR 9783, March 8, 1989).

As required by the CAA and the SIP, the majority of the members that compose any board or body which approves permits or enforcement orders must not derive any "significant portion" of their income from persons subject to permits and enforcement orders or persons who appear before the board on issues related to the CAA or the Louisiana Air Quality Rules (La. R.S. 30:2014.1). The members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest.

Louisiana has not delegated any authority to implement any of the provisions of its plan to local governmental entities. The LDEQ acts as the primary air pollution control agency.

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities¹² and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(E) are met.

(F) Stationary source monitoring system: CAA section 110(a)(2)(F) requires that the SIP provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. Element F requires the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources and require that the state correlate the source reports with emission limitations or

¹² Cited in the TSD.

standards established under the CAA. These reports must be made available for public inspection at reasonable times.

LAC 33:III Chapter 9 authorizes the LDEQ to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. There are also SIP approved state regulations pertaining to sampling and testing and requirements for reporting of emissions inventories (81 FR 4891 (January 28, 2016)). In addition, SIP approved rules establish general requirements for maintaining records and reporting emissions.¹³

The LDEQ uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with SIP approved regulations and additional EPA requirements. The SIP requires this information be made available to the public. Provisions concerning the handling of confidential data and proprietary business information are included in the SIP approved regulations. These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources.

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(F) are met.

¹³ LAC 33:III Chapter 9 outlines the general requirements for maintaining records and reporting. There are also additional requirements provided in the rules for each emission source, for example Chapter 13 outlines the emission standard for Particulate Matter where there are additional recording keeping requirements for abrasive blasting. All chapters are noted in the TSD.

(G) Emergency authority: CAA section 110(a)(2)(G) requires a demonstration that the state has the authority to restrain any source from causing imminent and substantial endangerment to public health or welfare or the environment. The SIP must include an adequate contingency plan to implement such authorities as necessary.

La R.S. 30:2011.D.15 provides LDEQ with the required authority to address environmental emergencies, and LDEQ has contingency plans to implement the emergency episode provisions in the SIP. The LDEQ promulgated the “Prevention of Air Pollution Emergency Episodes,” which includes contingency measures, and these provisions were approved into the SIP in 1989 (54 FR 9783, March 8, 1989). The episode criteria and contingency measures are found in LAC 33.III Chapter 56.

Louisiana has general emergency powers to address any possible dangerous air pollution episode, if necessary, to protect the environment and public health.

Based upon review of the infrastructure SIP submissions, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(G) are met.

(H) Future SIP revisions: CAA section 110(a)(2)(H) requires that states must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

La R.S. 30:2011 authorizes the LDEQ to revise the Louisiana SIP, as necessary, to account for revisions of an existing NAAQS, establishment of a new NAAQS, to attain and maintain a NAAQS, to abate air pollution, to adopt more effective methods of attaining a NAAQS, and to respond to EPA SIP calls concerning NAAQS adoption or implementation.

Based upon review of the infrastructure SIP submissions, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(H) are met.

(I) Nonattainment areas: The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

The EPA does not expect infrastructure SIP submissions to address element I. The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for CAA section 110 infrastructure elements. Instead, the EPA will take action on part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.¹⁴

(J) Consultation with government officials, public notification, PSD and visibility protection: The SIP must meet the following three CAA requirements: (1) section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; (3) prevention of significant deterioration of air quality and (4) visibility protection.

(1) Interagency consultation: As discussed in detail in the TSD, both the La R.S and LAC require a public hearing before the adoption of any regulations or emission control requirements, and all interested persons are given a reasonable opportunity to review the action that is being proposed and to submit data or arguments, either orally or in writing, and to examine witnesses

¹⁴ This infrastructure SIP rulemaking will not address the Louisiana program for provisions related to nonattainment areas, since EPA considers evaluation of these provisions to be outside the scope of infrastructure SIP actions.

testifying at the hearing (La R.S. 30:2011, LAC 33:III Chapter 5). This means, among other things, that the SIP revision public participation requirements are met.

In addition, the La R.S provides the LDEQ the power and duty to establish cooperative agreements with local authorities, and consult with other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control (La. R.S. 30:2032). Furthermore, as found in LAC 33:III Chapter 5, the Louisiana PSD SIP rules mandate that the LDEQ provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Manager (FLMs) whose lands may be affected by emissions from the source or modification (LAC 33:III.509). Additionally, these rules require the LDEQ to consult with FLMs regarding permit applications for sources with the potential to impact Class I Federal Areas. The SIP also includes a commitment to consult continually with the FLMs on the review and implementation of the visibility program. Louisiana works with the FLMs providing notification or early consultation with a new or modifying source prior to the submission of a permit application and with PSD projects. Likewise, the State's Transportation Conformity SIP rules (LAC 3:III Chapter 13) provide for interagency consultation, resolution of conflicts, and public notification.

(2) *Public Notification:* On January 10, 1980, the Governor submitted a SIP revision to the ambient monitoring portion of the state implementation plan. The revision was included into the SIP on August 6, 1981 (46 FR 40005). This portion of the SIP includes requirements for public notification of information related to air quality standards violations included in 40 CFR part 51 in order to meet the requirements of Section 127 of the Act, requiring LDEQ to regularly

notify the public of instances or areas in which any NAAQS are exceeded, advise the public of the health hazards associated with such exceedances, and enhance public awareness of measures that can prevent such exceedances and ways in which the public can participate in efforts to improve air quality. In addition, as discussed for infrastructure element B above, the LDEQ air monitoring website provides air quality data for each of the monitoring stations in Louisiana; this data is provided instantaneously for certain pollutants, such as ozone. The website also provides information on the health effects of lead, ozone, particulate matter, and other criteria pollutants.¹⁵

(3) *PSD*: The PSD requirements for this element are the same as those addressed under element (C) above. As was mentioned earlier, the State has a PSD program, so this requirement has been met.

(4) *Visibility Protection*: The Louisiana SIP requirements relating to visibility and regional haze do not change when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements for Louisiana due to the revision of the 2015 ozone NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to infrastructure element (J).

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(J) are met.

(K) *Air quality and modeling/data*: Element K requires that the SIP provide for performing air quality modeling to predict the effects on ambient air quality from emissions of any NAAQS

¹⁵ Louisiana's ambient air monitoring web page includes links to the air monitoring sites, list of monitoring sites mobile air monitoring lab information, guidance documents and other monitoring information. The page may be found: <https://www.deq.louisiana.gov/page/ambient-air-monitoring-program>.

pollutant, and for submission of such data to the EPA upon request.

The LDEQ has the power and duty, under La R.S. 30:2011 *et seq.* to employ or provide scientific, technical, administrative and operational services necessary to carry out the duties of the Department of Environmental Quality. The LDEQ may, by contract, secure services as it may deem necessary to carry out the duties of the Department of Environmental Quality. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, Louisiana has the ability to perform modeling for primary and secondary NAAQS as necessary consistent with their SIP approved PSD rules and with EPA issued guidance.

The La R.S. authorizes and requires LDEQ to cooperate with the federal government and local authorities concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA. LAC 33:III.509.L(1) states that “all estimates of ambient concentrations required under this Subsection shall be based on applicable air quality models, databases, and other requirements specified in Appendix W of 40 CFR part 51”.

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(K) are met.

(L) Permitting fees: The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under CAA section 504, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement

applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by the EPA.

The State has met this requirement as it has a fully developed fee system in place which is outlined in LAC 33:III Chapter 2 and is approved as part of the SIP. See element (E) above for the description of the mandatory collection of permitting fees outlined in the SIP.

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(L) are met.

(M) Consultation/participation by affected local entities: CAA section 110(a)(2)(M) requires that the SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See the discussion for element (J) above for a description of the SIP's public participation process, the authority to advise and consult, and the PSD SIP's public participation requirements. Additionally, the LDEQ noted that La R.S. 30:2011(D)(21) also requires initiation of cooperative action between local authorities and the LDEQ, between one local authority and another, or among any combination of local authorities and the LDEQ for control of air pollution in areas having related air pollution problems that overlap the boundaries of political subdivisions, and has authority to enter into agreements and compacts with adjoining states and Indian tribes, where appropriate. The transportation conformity component of the Louisiana SIP requires that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related issues. (LAC 33:III.1434).

Based upon review of the SIP submissions for the 2015 ozone NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in the Louisiana SIP, the EPA is proposing to find that the requirements of CAA section 110(a)(2)(M) are met.

III. Proposed Action

The EPA is proposing to approve the February 7, 2019 submittal, and portions of the November 8, 2019 submittal for Louisiana pursuant to the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2015 ozone NAAQS. Table 1 below outlines the specific actions the EPA is proposing to approve. As mentioned earlier in this action, the EPA is not taking action on portions of CAA section 110(a)(2)(D)(i) for Louisiana for the 2015 ozone NAAQS.

Table 1- Proposed Action on Louisiana Infrastructure SIP Submittals for the 2015 ozone NAAQS under CAA section 110(a)(2)(A)-(M)

Element	2015 O ₃
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii): PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Prohibit emissions to other states which will (1) significantly contribute to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS	NA
(D)(i)(II): Prohibit emissions to other states which will (3) interfere with PSD requirements	A
(D)(i)(II): Prohibit emissions to other states which will (4) interfere with visibility protection	NA
(D)(ii): Interstate Pollution Abatement and International Air Pollution	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A

(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table:

A - Approve;

+ - Not germane to infrastructure SIPs

NA - No action. EPA will take future action in a separate rulemaking action.

Based upon our review of these infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in the State’s submissions or referenced in the Louisiana SIP, the EPA finds that Louisiana has the infrastructure in place to address required elements of CAA sections 110(a)(2)(A)-(C), (D)(i)(II) sub-element 3, (D)(ii)-(H), and (J)-(M) to ensure that the 2015 ozone NAAQS is implemented throughout the State of Louisiana.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve SIP submissions that comply with provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to 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
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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, Ozone, Incorporation by reference,
Reporting and recordkeeping requirements.

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

Dated: February 24, 2020.

Kenley McQueen,
Regional Administrator, Region 6.

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