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40 CFR Part 81

Determination and Proposed Effective Date Modification for the Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[LA–58–1–7522; FRL–7235–9]

Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing its finding that the Baton Rouge ozone nonattainment area (hereinafter referred to as the Baton Rouge area) did not attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1999, the attainment date for serious nonattainment areas set forth in the Clean Air Act (CAA or Act). By operation of law, the Baton Rouge area is to be reclassified from a serious to a severe nonattainment area on the effective date of this rule. In addition, EPA is requiring Louisiana to submit State Implementation Plan (SIP) revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas within 12 months of the effective date of this rule and establishing November 15, 2005, as the date by which the Baton Rouge area must attain the ozone NAAQS.

In a Judgment entered on March 7, 2002, the United States District Court for the Middle District of Louisiana, ordered EPA to determine, within 90 days, whether the Baton Rouge area had attained the applicable ozone standard under the CAA, and ordered EPA to promptly thereafter publish the required notice. *Louisiana Environmental Action Network (LEAN)* v. *Whitman,* No. 00–879–A. The rulemaking issued today complies with the Court's Judgment. See **SUPPLEMENTARY INFORMATION** regarding a proposed rule published elsewhere in this issue that would affect this final rule.

DATES: This final rule is effective on August 23, 2002.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733; and the Louisiana Department of Environmental Quality (LDEQ), 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884. Please contact the appropriate office at least 24 hours in advance.

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

SUPPLEMENTARY INFORMATION: In a separate document titled: ''Proposed Effective Date Modification for Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area,'' published elsewhere in today's **Federal Register**, EPA is proposing to delay the effective date of this rule until October 4, 2002. In that document, EPA also sets forth its intent to propose to withdraw this final determination and reclassification, if EPA grants the State an attainment date extension before the effective date of this reclassification rule.

On May 10, 2000, the Governor of Louisiana submitted a request for an attainment date extension for the Baton Rouge area pursuant to EPA's ''Guidance on Extension of Attainment Dates for Downwind Transport Areas'' (Richard D. Wilson, Acting Assistant Administrator for Air and Radiation) issued July 16, 1998 (hereinafter referred to as the extension policy). On November 22, 2000, Tulane Law School, on behalf of the Louisiana Environmental Action Network (LEAN), filed a complaint in the United States District Court for the Middle District of Louisiana against EPA, alleging that EPA failed to discharge its duty to make and publish a determination whether the Baton Rouge area attained the 1-hour ozone NAAQS by November 15, 1999. On May 9, 2001, EPA published a proposal to determine that the Baton Rouge area did not attain the 1-hour ozone NAAQS or in the alternative allow Louisiana an opportunity to qualify for an attainment date extension pursuant to EPA's extension policy.

Louisiana is in the concluding stages of a process that could culminate in EPA final action on the Attainment Plan and Transport SIP (hereinafter referred to as Attainment Plan/Transport) that was submitted on December 31, 2001, and on a possible attainment date extension. This extension, if granted, would allow the area to remain classified as a serious nonattainment area. EPA is continuing to work to complete action on the extension request by October 4, 2002. If EPA takes final action to extend the attainment date during the pre-effective period of this rule, EPA intends to withdraw this final determination and reclassification prior to the time that they become effective.

Background

Throughout this document whenever ''we, us, or our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

I. What Are The National Ambient Air Quality Standards?
II. What Is the NAAQS For Ozone?
III. What Is a SIP?
IV. What Is the Baton Rouge Ozone Nonattainment Area?
V. What Does This Action Do?
VI. What Does the CAA Say about Determinations of Nonattainment and Reclassifications, and How Does it Apply to the Baton Rouge Area?
VII. Why Did EPA Defer Making a Determination Regarding the Baton Rouge Area's Attainment Status Beyond the Time Frame Prescribed by the CAA?
VIII. Why Is this Action Necessary?
IX. What Is the Area's New Classification?
X. What Is the New Attainment Date for the Baton Rouge Area?
XI. When must Louisiana Submit SIP Revisions Fulfilling the Requirements for Severe Ozone Attainment Areas?
XII. What Comments Were Received on the Proposed and Supplemental Proposed Rule for the Reclassification and Potential Eligibility for Extension of the Attainment Date?
XIII. Administrative Requirements

I. What Are the National Ambient Air Quality Standards?

EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires that these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards, established under section 109 of the CAA, present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

II. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms which are referred to as the 1-hour and 8-hour standards. Table 1 summarizes the ozone standards.

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard	Value	Type [a] Method of compliance
1-hour	0.12 ppm	Primary and Secondary. Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.
8-hour	0.08 ppm	Primary and secondary. The average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period.

[a] Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to Baton Rouge and it is the classification of the Baton Rouge area with respect to the 1-hour ozone standard that is addressed in this document.

III. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA.

After engaging in any state-required public participation, each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

IV. What Is the Baton Rouge Ozone Nonattainment Area?

The Baton Rouge ozone nonattainment area, located in southern Louisiana, consists of East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Livingston Parishes.

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone standard prior to enactment of the 1990 CAA Amendments, such as the Baton Rouge area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. In addition, under section 181(a) of the Act, each area designated nonattainment under section 107(d) was classified as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. The design value for an area, i.e., the highest of the fourth highest 1-hour daily maximums in a given three-year period, characterizes the severity of the air quality problem. Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.160 and 0.180 ppm, such as the Baton Rouge area (which had a design value of 0.164 ppm in 1989), were classified as serious. These nonattainment designations and classifications were initially codified in 40 CFR Part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

Area class	Design value (ppm)	Attainment date
Marginal	0.121 up to 0.138	November 15, 1993.
Moderate	0.138 up to 0.160	November 15, 1996.
Serious	0.160 up to 0.180	November 15, 1999.
Severe	0.180 up to 0.280	November 15, 2005.
Extreme	0.280 and above	November 15, 2010.

In addition, under section 182(c) of the CAA, states containing areas that were classified as serious nonattainment were required to submit SIPs to provide for certain air pollution controls, to show progress toward attainment of the ozone standard through incremental emissions reductions, and to provide for attainment of the ozone standard as expeditiously as practicable, but no later than November 15, 1999. The SIP requirements for serious areas are listed primarily in section 182(c) of the CAA.

V. What Does This Action Do?

On May 9, 2001, EPA proposed its finding that the Baton Rouge ozone nonattainment area did not attain the 1-hour ozone NAAQS by the applicable attainment date (66 FR 23646). The proposed finding was based upon ambient air quality data from the years 1997, 1998, 1999. These data showed that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on an average of more than one day per year over this three-year period and that the area did not qualify for an attainment date extension under section 181(a)(5). EPA also proposed that the appropriate reclassification of the area was too severe.

In that proposed action, we also stated that Louisiana was seeking an extension of its attainment date pursuant to EPA's extension policy, published in a March 25, 1999, **Federal Register** notice (64 FR 14441). EPA's extension policy addresses areas which are affected by downwind transport of ozone and/or ozone precursors.

EPA proposed to take final action on the determination of nonattainment and reclassification of the Baton Rouge area only after the area had received an opportunity to qualify for an attainment date extension under the extension policy. Louisiana submitted an Attainment Plan/Transport SIP on December 31, 2001 for the Baton Rouge area. EPA was in the process of reviewing the Attainment Plan/Transport SIP when the United States District Court for the Middle District of Louisiana entered a Judgment on March 7, 2002, ordering EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. *LEAN* v. *Whitman,* No. 00–879–A. Given the compliance date of the Court's Judgment and the current status of the State's Attainment Plan/Transport SIP, EPA is not at this time able to complete its consideration of the applicability of its extension policy to the Baton Rouge area.

This action finalizes our finding that the Baton Rouge area did not to attain

the 1-hour ozone NAAQS by November 15, 1999, as prescribed in section 181 of the CAA, and fulfills EPA's nondiscretionary duty pursuant to section 182 of the Act. In addition, this action sets the dates by which Louisiana must submit SIP revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas and attain the 1-hour NAAQS for ozone. EPA's rulemaking actions are to be effective 60 days from publication in the **Federal Register**, unless the effective date is delayed as set forth below.

In its decision, the United States District Court for the Middle District of Louisiana acknowledged its limited authority under 42 U.S.C. 7604, ruling that it lacked the authority to issue an order restricting the effective date that EPA selects for its action. *LEAN* v. *Whitman,* No. 00–879–A.[1]

In a separate document titled: ''Proposed Effective Date Modification for Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area,'' published elsewhere in today's **Federal Register**, EPA is proposing to delay the effective date of this rule until October 4, 2002. In that document, EPA also sets forth its intent to withdraw this final determination and reclassification, if EPA grants the State an attainment date extension before the effective date of this reclassification rule. EPA believes that, if the Baton Rouge area is reclassified, the proposed additional time is necessary to allow regulated entities in the Baton Rouge area time to prepare for the new requirements that would become applicable in the area upon the effective date of the nonattainment determination and reclassification. During the period prior to the effective date, EPA and the State would also continue to work toward completing a separate rulemaking on the issue of whether Baton Rouge should be granted an extension of its attainment date based on Louisiana's December 31, 2001, Attainment Plan/Transport SIP pursuant to EPA's extension policy. EPA intends to withdraw this final determination of nonattainment and reclassification if we approve an attainment date extension within the pre-effective period.

Thus, EPA is today fully complying with the Court's Judgment while continuing to work with Louisiana to make progress toward final rulemaking action on an attainment date extension request for the Baton Rouge area. Louisiana and EPA are in the final stages of completing the actions necessary for a final rule. EPA believes that it is in the public interest to move forward to complete that rulemaking. Completion of the rulemaking prior to the effective date of today's action would allow EPA to assess and take into consideration the role of transported pollution in Baton Rouge's nonattainment problems, and to provide for an equitable distribution of responsibility for achieving attainment of the ozone standard in the area. In addition, concluding rulemaking on the attainment date extension would allow EPA to make available to the Baton Rouge area the attainment date extension policy that EPA has applied to other areas affected by transport. EPA has issued six final rulemakings granting requests for attainment areas: Washington, D.C. (66 FR 585, January 3, 2001), Greater Connecticut (66 FR 633, January 3, 2001), Springfield, Massachusetts (66 FR 665, January 3, 2001), Beaumont, Texas (66 FR 26913, May 15, 2001), St. Louis, Missouri (66 FR 33996, June 26, 2001), and Atlanta, Georgia (67 FR 30574, May 7, 2002). Thus, EPA's rulemaking actions today should be viewed in the context of complying with the Court's Judgment while continuing to conduct rulemaking on its nationwide program to address the role of transported air pollutants in ozone nonattainment areas.

VI. What Does the CAA Say About Determinations of Nonattainment and Reclassifications, and How Does It Apply to the Baton Rouge Area?

Under sections 107(d)(1)(C) and 181(a) of the Act, the Baton Rouge area was designated nonattainment for the 1-hour ozone NAAQS and classified as ''serious'' based on its design value of 0.164 ppm in 1989. These nonattainment designations and classifications were codified in 40 CFR Part 81 (see 56 FR 56694, November 6, 1991).

In addition, states containing areas that were classified as serious nonattainment areas were required to submit SIPs to provide for certain controls, to show progress toward attainment, and to provide for attainment as expeditiously as practicable, but not later than November 15, 1999 (section 181(a)(1)). Serious areas SIP requirements are found primarily in section 182(c) of the CAA.

Section 181(b)(2)(A) of the Act specifies that:

Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme areas, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

(i) The next higher classification for the area, or

(ii) The classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

Furthermore, section 181(b)(2)(B) of the Act provides that:

The Administrator shall publish a notice in the **Federal Register** no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

On May 9, 2001, EPA proposed its finding that the Baton Rouge area did not attain the 1-hour ozone standard by the applicable date (66 FR 23646). The proposed finding was based upon ambient ozone concentration data for the period 1997—1999, from the monitoring sites in the Baton Rouge area, which recorded an average of more than one exceedance per day per year (see Table 3).

[1] For additional information on other court rulings on the issue of the effective date for such an action, *see, Sierra Club* v. *Browner,* 130 F.Supp. 2d 78 (D.D.C. 2001), aff'd., 285 F. 3d 63 (D.C.Cir. 2002).

TABLE 3.—AIR QUALITY DATA FOR THE BATON ROUGE AREA (1997–1999)

Site	Number of days over standard (1997–1999)	Number of expected days over standard (1997–1999)	Average number of expected exceedance days per year	Site design value (ppm)
Site (Parish):				
Pride (East Baton Rouge)	1	1.1	0.4	0.116
Baker (East Baton Rouge)	3	3.0	1.0	0.123
Capitol (East Baton Rouge)	3	3.1	1.0	0.122
LSU (East Baton Rouge)	4	[a] 4.1	[a] 1.4	[a] 0.126
Carville (Iberville)	2	2.0	0.7	0.120
Plaquemine (Iberville)	2	2.0	0.7	0.120
Grosse Tete (Iberville)	5	[a] 5.3	[a] 1.8	[b] 0.126
Port Allen (West Baton Rouge)	3	3.0	1.0	0.119
Dutchtown (Ascension)	3	3.0	1.0	0.123
French Settlement (Livingston)	3	3.0	1.0	0.123

[a] A violation occurs when the number of expected exceedances is greater than 3.1 over a 3-year (rolling) period (or a 3-year (rolling) average greater than 1.04). The statistical term ''expected exceedances'' is an arithmetic average explained at 40 CFR part 50, appendix H.
[b] Represents the 1997–1999 design value for the Baton Rouge area. Raw data source: U.S. EPA Aerometric Information Retrieval System (AIRS) database.

The air quality data in Table 3 were available for comment in our May 9, 2001, proposed finding of the area's failure to attain the ozone NAAQS. We received no comments pertaining to these data. Therefore, pursuant to section 181(b)(2)(B) of the CAA, we hereby make the determination that the Baton Rouge area did not attain the one-hour standard by the November 15, 1999, attainment date. For a listing of the average number of days when ambient ozone concentrations exceeded the one-hour ozone standard see 66 FR 23646 (May 9, 2001).

VII. Why Did EPA Defer Making a Determination Regarding the Baton Rouge Area's Attainment Status Beyond the Time Frame Prescribed by the CAA?

For some time, EPA has recognized that pollutant transport can impair an area's ability to meet air quality standards by the date prescribed in the Act. In March 1995 a collaborative, Federal-state process to assess the ozone transport problem began. Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address transport of ozone and ozone-forming pollutants across state boundaries.

On November 7, 1997, EPA acted on OTAG's recommendations and issued a proposal (the proposed oxides of nitrogen (NO_X) SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit state plans addressing the regional transport of ozone. These SIPs will decrease the transport of ozone across state boundaries in the eastern half of the United States by reducing emissions of NO_X (a precursor to ozone formation). EPA took final action on the NO_X SIP call on October 27, 1998 (63 FR 57356). EPA expects the final NO_X SIP call will assist many areas in attaining the 1-hour ozone standard.

On July 16, 1998, in consideration of these factors and the realization that many areas are unable to meet the CAA-mandated attainment dates due to transport, EPA issued an attainment date extension policy. Under this policy, the attainment date for an area may be extended provided that the following criteria are met: (1) The area is identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date, or an upwind area in another state that significantly contributes to downwind nonattainment (by ''affected by transport,'' EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain); (2) an approvable attainment demonstration is submitted along with any necessary, adopted local measures and with an attainment date that shows that the area will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory attainment date for upwind nonattainment areas, *i.e.*, assuming the boundary conditions reflect those upwind reductions; (3) the area has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas; and (4) the area provides it will implement all adopted measures as expeditiously as practicable but no later than the date by which the upwind reductions needed for attainment will be achieved (64 FR 14441, March 25, 1999).

EPA contemplated that when it acted to approve such an area's attainment demonstration, it would, as necessary, extend that area's attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. As a result, the area would no longer be subject to reclassification or ''bump-up'' for failure to attain by its original attainment date under section 181(b)(2).

On May 10, 2000, the Governor of Louisiana submitted a letter to EPA committing to meet the criteria of the extension policy by August 31, 2001.[2] To support the Governor's request that EPA consider an attainment date extension for the Baton Rouge area based on transported air pollution, the Louisiana Department of Environmental Quality (LDEQ) submitted to EPA a report entitled, ''Assessment of the Contribution of Emissions from the Houston Area to Ozone Concentrations in the Five-Parish Baton Rouge Nonattainment Area,'' dated May 3, 2000, indicating that pollutants transported from Texas may have impeded attainment of the 1-hour ozone standard in Baton Rouge. A copy of this report can be found in the docket for the proposed rulemaking.

As previously noted, on May 9, 2001, EPA proposed (66 FR 23646) its finding that the Baton Rouge area did not attain the 1-hour ozone NAAQS by its

[2] The Governor's commitment letter and EPA's response to the letter are included in the docket for the proposed rulemaking.

attainment date and announced the area's potential eligibility for an attainment date extension under the extension policy. The area's eligibility was dependent, in part, on EPA's approval of an attainment demonstration. Our proposed action described the conditions that EPA anticipated would lead to final action on both alternatives.

We outlined the necessary steps that Louisiana needed to take in order for us to consider extending the Baton Rouge area attainment date under the extension policy. Those steps included:

1. Demonstrate that the Baton Rouge area's air quality is affected by transport from (a) an upwind area in Louisiana with a later attainment date, or (b) an upwind area in another State, which significantly contributes to Baton Rouge's continued ozone nonattainment.

2. Submit to EPA an approvable attainment demonstration by August 31, 2001.[3] This demonstration must show that the Baton Rouge area will attain as expeditiously as practicable, but no later than the attainment date of the upwind area.

3. Submit any additional local control measures needed for expeditious attainment.

4. Submit proof that all applicable local control measures required under the serious classification have been adopted. As part of this demonstration, Louisiana's SIP submittal must include at least the following:

(a) Any changes to Louisiana's Nonattainment New Source Review program necessary to ensure that the State's rules meet EPA's nonattainment new source review requirements.

(b) Contingency measures that meet the requirements of section 182(c)(9) of the Act.

(c) Any revisions to the vehicle inspection and maintenance (I/M) program necessary to meet the applicable federal I/M program requirements.

5. Provide that all newly adopted control measures will be implemented as expeditiously as practicable. All measures must be implemented no later than the date that the upwind reductions needed for attainment will be achieved.

We anticipated that when we acted to approve such an area's attainment demonstration, we would, as necessary, extend that area's attainment date to the date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. The area would then no longer be subject to reclassification or ''bump-up'' for failure to attain by its original attainment date under section 181(b)(2) since we would extend the Baton Rouge area's attainment date to a date consistent with the approved attainment demonstration. Under these circumstances, the area would retain its serious nonattainment status. In other words, EPA would propose to defer the attainment determination required under section 181(b)(2)(B) of the Act until such time as the new, extended attainment date had passed. However, if Louisiana did not meet the criteria of the extension policy, we proposed to finalize the finding of failure to attain, and the Baton Rouge area would be reclassified to severe ozone nonattainment.

VIII. Why Is This Action Necessary?

On November 22, 2000, LEAN filed a complaint in the United States District Court for the Middle District of Louisiana against EPA (*LEAN* v. *Whitman*, No. 00–879–A) regarding the attainment status and classification of the Baton Rouge area. On March 7, 2002, the United States District Court for the Middle District of Louisiana entered a Judgment compelling EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. The Court also ordered EPA to publish in the **Federal Register** a notice of a final action reflecting both the determination and any reclassification of the area required as a result of the determination. Our final determination and this notice are in direct response to the Court's Judgment.

IX. What Is the Area's New Classification?

Section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification be the higher of either the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. The ozone design value for the Baton Rouge area following the enactment of the 1990 CAA amendments (1987–1989) was 0.164 ppm. The preliminary design value[4] for the Baton Rouge area at the time of the proposed finding of failure to attain was based on air quality monitoring data in 2000 and corresponded to a design value of 0.135 ppm[5]. The preliminary design value for the most recent compliance period, 1999–2001, is 0.128 ppm.[6] This design value of 0.128 ppm falls within the range linked to the classification of ''marginal'' nonattainment. By contrast, the next higher classification for the Baton Rouge area is ''severe'' nonattainment. Since ''severe'' is a higher nonattainment classification than ''marginal,'' under the statutory scheme prescribed by the Act, the area is reclassified to severe nonattainment on the effective date of this rule. No area can reclassified as extreme under section 181(b)(2), and therefore a serious area, such as Baton Rouge, that does not meet the serious area attainment date, must be reclassified to ''severe.''

X. What Is the New Attainment Date for the Baton Rouge Area?

Under section 181(a)(1) of the Act, the new attainment deadline for serious ozone nonattainment areas reclassified to severe under section 181(b)(2) would generally be as expeditious as practicable but no later than the date applicable to the new classification, i.e., November 15, 2005.

XI. When Must Louisiana Submit SIP Revisions Fulfilling the Requirements for Severe Ozone Nonattainment Areas?

Under section 181(a)(1) of the Act, the attainment deadline for serious ozone nonattainment areas reclassified to severe under section 181(b)(2) is as expeditiously as practicable but no later than November 15, 2005. Under section 182(i), such areas are required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS. Under section 182(d), severe area plans are required to meet all the requirements for serious area plans plus the requirements for severe areas, including, but not limited to: (1) A 25 ton per year major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major applicability cutoff; (3) a new source review (NSR) offset requirement of at least 1.3 to 1; (4) a rate of progress in emission reductions of ozone precursors of at least 3 percent per year from 2000 until the attainment year; and (5) a fee requirement for major

[3] We proposed to extend the August 31, 2001 submittal deadline to December 31, 2001, on July 25, 2001 (Supplemental Proposed Rule, 66 FR 38608). No adverse comments were received on the proposed deadline extension, therefore, the extension was granted.

[4] Preliminary design value is the design value pending the final Quality Assurance/Quality Control checks of the air monitoring data.

[5] A listing of the ozone exceedances (1995–1999) and 3-year design values (95–97, 96–98, 98–00) by monitoring site can be found in the docket file for the May 9, 2001 (66 FR 23646) proposed rulemaking.

[6] A listing of the preliminary ozone exceedances and design values can be found in the docket file for this rulemaking.

sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X)[7] should the area fail to attain by 2005.[8] We have issued a ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' that sets forth our preliminary views on these section 182 requirements and how we will act on SIPs submitted under Title I. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

Additionally, since the Baton Rouge area has did not attain by the serious area attainment date and in order to fulfill the contingency measures requirements of sections 172(c)(9) and 182(c)(9) of the CAA, Louisiana is also required to submit a revision to the SIP containing additional contingency measures in their severe area SIP.

The Baton Rouge severe area plan must also contain adopted regulations, and/or enforceable commitments to adopt and implement control measures in regulatory form by specified dates, sufficient to make the required rate of progress and to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2005. Section 182(i) further provides that we may adjust the CAA deadlines for submitting these severe area SIP requirements. In addition to establishing a new attainment date, EPA must also address the schedule by which Louisiana is required to submit SIP revisions meeting the CAA's pollution control requirements for severe areas. An option on which EPA invited comments (66 FR 23646), was to require that Louisiana submit SIP revisions fulfilling all of the severe area requirements, no later than one year after final action on the reclassification. We also proposed that if the submission showed that the area could attain the one-hour ozone NAAQS sooner than the attainment date established in this final reclassification notice, we would adjust the attainment date to reflect the earlier date, consistent with the requirement in section 181(a)(1) that the NAAQS be attained as expeditiously as practicable. EPA did not receive any comments on the proposed schedule. Therefore, EPA is requiring Louisiana to submit SIP revisions addressing the Act's pollution control requirements for severe ozone nonattainment areas within 12 months of the effective date of this rule.

XII. What Comments Were Received on the Proposed Determination of Nonattainment and Reclassification, and How Has EPA Responded?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on May 9, 2001 (66 FR 23646) for the proposed Clean Air Reclassification and Notice of Potential Eligibility for Extension of Attainment Date, Louisiana; Baton Rouge Ozone Nonattainment Area. In that notice, we proposed to find that the Baton Rouge serious ozone nonattainment area did not attain the one-hour ozone National Ambient Air Quality Standard by November 15, 1999. Alternatively, we proposed to evaluate the Baton Rouge area's potential eligibility for an attainment date extension if Louisiana made a submittal by August 31, 2001,[9] that satisfied with the conditions of EPA's attainment date extension policy.

EPA also received comments from the public on the supplemental proposed rulemaking published on July 25, 2001 (66 FR 38608) for the ''Clean Air Reclassification and Notice of Potential Eligibility for Extension of Attainment Date, Louisiana; Baton Rouge Ozone Nonattainment Area.'' This notice supplemented the proposed actions of the May 9, 2001, notice, by proposing to extend the deadline for submission of an attainment plan from August 31, 2001, to December 31, 2001.

In this action EPA is addressing the relevant comments on the May 9, 2001, proposal and the July 25, 2001, proposals. A summary of the relevant comments, and EPA responses to the comments, is provided below.

Comments on EPA's Attainment Date Extension Policy

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

Response: EPA is not able to complete its consideration of the applicability of the extension policy to the Baton Rouge area prior to the court-ordered deadline for making a determination. Therefore, EPA is not granting an extension in this action. Comments relating to the attainment date extension will be addressed if EPA takes final action regarding an extension of Baton Rouge's attainment date based on transport. However, responses to previous comments received on the policy can be found in the rulemakings approving attainment date extensions for Washington, DC, Greater Connecticut, and Springfield, Massachusetts, published January 3, 2001 (66 FR 585, 66 FR 633, 66 FR 665, respectively), for Beaumont/Port Arthur, Texas, published May 15, 2001 (66 FR 26914), St. Louis, Missouri, published June 26, 2001 (66 FR 33996), and Atlanta, Georgia, published May 7, 2002 (67 FR 30574).

EPA was in the process of determining whether Louisiana could undertake the actions necessary for the area to qualify for the attainment date extension when the United States District Court for the Middle District of Louisiana entered a Judgment on March 7, 2002, ordering EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. EPA cannot reach a decision on the attainment date extension request from Louisiana by the time the Court has ordered EPA to act. Therefore, EPA is using the existing attainment date in making the court-ordered determination. However, as explained above, in a separate **Federal Register** document EPA is proposing to delay the effective date of today's determination of nonattainment and reclassification to October 4, 2002. In that notice, EPA announces its intent to propose to withdraw today's determination of nonattainment and reclassification if EPA approves an attainment date extension before the effective date of today's action.

Comments Related to the Proposed Reclassification

EPA received nine comment letters opposing and two comment letters supporting the proposed reclassification of the Baton Rouge area from a serious classification to severe classification. The comments opposing the

[7] Ozone is not emitted directly into the air, but is formed through the photochemical reaction of NO_X and VOCs.

[8] Section 182(d)(3) sets a deadline of December 31, 2000, to submit the plan revision requiring fees for major sources should the area fail to attain. This date can be adjusted pursuant to CAA section 182(i). We proposed to adjust this date to coincide with the submittal deadline for the rest of the severe area plan requirements.

[9] We proposed to extend the August 31, 2001 submittal deadline to December 31, 2001, on July 25, 2001 (Supplemental Proposed Rule, 66 FR 38608). No adverse comments were received on the proposed deadline extension, therefore, the extension was granted.

reclassification cited the progress toward attainment that the Baton Rouge area has accomplished, the contribution of the transport of ozone from upwind sources, and the potential negative impacts the reclassification may have on the area.

Comment: The Baton Rouge area has made significant progress in mitigating its ozone problems and it is close to achieving attainment of the one-hour ozone standard. The efforts of the Louisiana Department of Environmental Quality and the Ozone Task Force (OTF) in generating a SIP with prominent features of reasonable and effective emissions control strategies were cited in the comments opposing the proposed reclassification. Also stated were opinions on: the current air quality data indicating a marginal classification if the Baton Rouge were evaluated today; the influence of transport of ozone from upwind sources, and, lastly; the effect reclassification would have by slowing down the process of cleaning up the air because of all of the work that has already been done in the preparation of the December 31, 2001, SIP.

Response: We commend the work that the Louisiana Department of Environmental Quality has performed, the efforts of the OTF, and the resulting progress of the Baton Rouge area in mitigating their ozone conditions. These efforts were reflected in the submitted Attainment Plan/Transport SIP dated December 31, 2001. EPA was in the process of reviewing the Attainment Plan/Transport SIP when the United States District Court for the Middle District of Louisiana issued a Judgment on March 7, 2002, ordering EPA to determine, by June 5, 2002, whether the Baton Rouge area had attained the applicable ozone standard under the CAA. Given the Court's Order and the current status of EPA's review of the Attainment Plan/Transport SIP, EPA is unable to act on the attainment date extension request from Louisiana at this time.

Under section 181(b)(2)(A) of the CAA, the attainment determination is made solely on the basis of air quality data, and any reclassification is by operation of law. So in keeping with the existing court-ordered deadline to make an attainment determination, EPA must make a determination of nonattainment and by operation of law, the Baton Rouge area is to be reclassified from a serious to a severe nonattainment area on the effective date of this rule. Details on the evaluation of the air quality data can be found in the proposal for this action at 66 FR 23646 (May 9, 2001).

Comments Related to the Consequences of Reclassification

Comment 1: If the Baton Rouge area is reclassified to severe, additional control measures will be required by the CAA. These control measures include the use of reformulated gasoline, the establishment of transportation control measures, a change in the definition of ''major source,'' an adjustment of the offset ratio for modifications or new construction of major sources, and the imposition of a VOC emission fee if the Baton Rouge area does not achieve attainment by November 15, 2005. These severe area controls would be unduly burdensome on business and economic growth in the area.

Response 1: Under section 181(b)(2)(A), the attainment determination is made solely on the basis of air quality data, and any reclassification is by operation of law. If an area is reclassified to ''severe,'' the requirements of 182(d) apply.

With respect to the perceived burden imposed on industry by the severe area requirements, EPA notes that the severe area planning requirements are imposed by section 182(d) of the CAA and the economic impact of reclassification is not a consideration in making the attainment determination under section 181(b)(2) of the CAA. It is, however, appropriate for the state to consider specific economic impacts in meeting the planning requirements of section 182(d) and in developing specific regulatory requirements for specific resources.

Comment 2: The Louisiana Chemical Association (LCA) commented on the Reformulated Gas program. LCA stated that when an area is reclassified as severe, it becomes a ''covered area'' under Clean Air Act section 211(k)(10)(D) and is required to use RFG which must have a minimum 2% (wt.) oxygen content most commonly met through the use of either methyl tertiary butyl ether (MTBE) or ethanol. LCA describes several problems associated with the use of MTBE and ethanol, including contamination of drinking water supplies by MTBE, potential federal legislation to ban MTBE, increased cost of fuel using ethanol, increased VOC emissions from fuel using ethanol, carcinogenicity of ethanol, and potentially insufficient supplies of ethanol.

Response 2: The commenter is correct that the Clean Air Act requires mandatory participation in the federal RFG program for an ozone non-attainment area which is reclassified as severe, effective one year after the reclassification, see Section 211(k)(10)(D) of the CAA. This requirement under the Clean Air Act is implemented as a matter of law; EPA does not have discretion to change, waive, or fail to implement this requirement. This requirement has previously been implemented in June 1, 1996, one year following the reclassification of the Sacramento, California, metropolitan area to severe non-attainment status, see April 25, 1995, 60 FR 20237. It will also be implemented in December, 2002, when one year elapses following the reclassification of the San Joaquin Valley, California, area to severe non-attainment status, see November 8, 2001, 66 FR 56476.

The commenter has identified a number of concerns about the use of oxygenates in RFG, most of which were discussed in The Report of the Blue Ribbon Panel on Oxygenates in Gasoline, ''Achieving Clean Air and Clean Water,'' (September, 1999) which is available on the EPA website at the following location: *http://www.epa.gov/otaq/consumer/fuels/oxypanel/blueribb.htm.* This report, which was provided to EPA's Clean Air Act Advisory Committee in accordance with the requirements of the Federal Advisory Committee Act, recommends a number of actions be taken to address water quality concerns from the use of oxygenates in gasoline. Some of these actions can be taken by state and federal environmental agencies within their existing authority, and some of these actions require federal legislative action. The Congressional bills mentioned by the commenter are some of the many legislative actions that have been proposed to address these issues; additional Congressional bills are pending today that have been introduced in the current Congressional session for the same purpose, but none of these bills has yet become law.

EPA has initiated all of the actions recommended by the Blue Ribbon Panel that are within EPA's existing authority, including actions to improve the rate of compliance with EPA's existing underground storage tank (UST) requirements (designed to prevent leaks from gasoline stored in USTs to groundwater) and actions to strengthen EPA's existing programs to protect water quality. In the meantime, the federal RFG program continues to provide substantial air quality benefits to those areas currently participating in the program.

Comment 3: LCA states that requirements for special gasoline blends in one area of the state will harm the gasoline distribution and supply system, citing an article in USA Today dated

June 27, 2000, which says the gasoline distribution system is designed to handle six grades of gasoline and since the 1970s has had to accommodate at least seven new varieties of cleaner-burning fuels. The article says this can cause gas prices to increase.

Response 3: EPA reiterates its response to Comment 2, that mandatory participation in the federal RFG program for areas reclassified as severe is a statutory requirement which EPA has no discretion to change, waive, or fail to implement. We also note that, at the direction of the National Energy Policy Development Group in its May, 2001, report on ''National Energy Policy'', EPA studied the effects on fuel supply and distribution of unique fuel blends (often called ''boutique'' fuels,) and released two reports in October, 2001, both of which are available on EPA's website at the following location: *http://www.epa.gov/otaq/fuels.htm#oct2401.* Impacts on prices are discussed in these two reports.

Comment 4: LCA states that it is likely vehicles will re-fuel outside the RFG covered area in order to avoid the higher prices, which would reduce the efficacy of the program. LCA also states that the RFG requirement makes no sense when these problems could be avoided by allowing the state more time to demonstrate the need for an extension of the attainment deadline due to transport of emissions from Houston.

Response 4: EPA reiterates its response to Comment 2, that mandatory participation in the federal RFG program for areas reclassified as severe is a statutory requirement which EPA has no discretion to change, waive, or fail to implement. We also note that the commenter has provided no support for its statement that vehicles will re-fuel outside the RFG covered area in order to avoid higher prices. We are unaware that this is a significant problem in any of the existing RFG covered areas.

Comment 5: The LCA commented on the negative impacts of the volatile organic carbon (VOC) emission fee program requirement in CAA sections 182(d)(3) and 185.

Response 5: The emission fee program is a specific requirement under the CAA for severe or extreme ozone nonattainment areas. It is required to be implemented only in the event a severe nonattainment area does not attain by the applicable attainment date of November 15, 2005. Furthermore, EPA believes that is unlikely that the fee requirements will have to be implemented if the State proceeds with the planned emission reductions since these should result in the Baton Rouge area attaining the one hour ozone standard.

Comment 6: One commenter contends that section 181(b)(2) of the Clean Air Act is unconstitutional on its face and/or as applied when it requires reclassification to severe where the area is affected by transport and where its current design value is ''marginal.'' The commenter claims that the exercise of the Police Power is unconstitutional under the Due Process clause of the Constitution because there is no rational relationship between the ends chosen by Congress and its purpose. The commenter further alleges that this interpretation of section 181(b)(2) violates the Equal Protection Clause because areas affected by transport within the U.S. are not provided the same protection afforded to areas affected by transport from outside of the U.S. under section 179B.

Response 6: The bare constitutional challenges are without merit. The commenter provides no support for its allegations of unconstitutionality and no case law upholding its assertions. Moreover, section 181(b)(2) passes Constitutional muster under the Due Process and Equal Protection clauses.

Comment 7: A commenter contends that the VOC emission fee, if imposed, is an illegal and unconstitutional tax under the U.S. and Louisiana constitutions.

Response 7: The commenter provides no support for its bare assertions of illegality and unconstitutionality. Moreover, the emission fee is not being imposed on sources by this rulemaking but is merely a SIP submission requirement of the CAA to which severe ozone nonattainment areas are subject.

XIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a

rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective August 23, 2002.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: June 5, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

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

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

2. In § 81.319 the table for Louisiana—Ozone is amended by revising the entry for the Baton Rouge area to read as follows:

§ 81.319 Louisiana

* * * * *

LOUISIANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge Area:				
Ascension Parish	11/15/90	Nonattainment	8/23/02	Severe.
East Baton Rouge Parish	11/15/90	Nonattainment	8/23/02	Severe.
Iberville Parish	11/15/90	Nonattainment	8/23/02	Severe.
Livingston Parish	11/15/90	Nonattainment	8/23/02	Severe.
West Baton Rouge Parish	11/15/90	Nonattainment	8/23/02	Severe.
* * *	*	*	*	*

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

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[FR Doc. 02–15712 Filed 6–21–02; 8:45 am]

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