to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 5, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–11679 Filed 5–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2008–0932; FRL–9151–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Texas; Beaumont/Port Arthur Ozone Nonattainment Area: Redesignation to Attainment for the 1997 8-Hour Ozone Standard and Determination of Attainment for the 1-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the State of Texas to redesignate the Beaumont-Port Arthur (BPA) Texas ozone nonattainment area to attainment of the 1997 8-hour ozone standard. In proposing to approve this request, EPA also proposes to approve as a revision to the BPA State Implementation Plan (SIP), a 1997 8-hour ozone maintenance plan with a 2021 Motor Vehicle Emissions Budget (MVEB). EPA is proposing to determine that the BPA nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS), based on complete, quality-assured, and certified ambient air quality monitoring data for the 2005–2007 and 2006–2008 monitoring periods, as well as data from 2009 that are in EPA's Air Quality System (AQS) database but not yet certified, that demonstrate that the area has attained and is continuing to attain the 1997 8-hour ozone NAAQS. EPA also is proposing to make a determination that the BPA area is meeting the 1-hour ozone standard based upon three years of complete, quality-assured, and certified ambient air quality monitoring data for the 2005–2007 and 2006–2008 monitoring periods, as well as data from 2009 in AQS but not yet certified.

EPA is proposing to approve the BPA area's 2002 base year emissions inventory as part of the BPA SIP and to conclude that if this action is finalized, the area is meeting all of its applicable marginal area requirements for purposes of redesignation for the 1997 8-hour ozone NAAQS. EPA also is proposing to approve as part of the BPA SIP, the Texas Clean-Fuel Vehicle (CFV) Program Equivalency Demonstration. EPA is proposing to find that if these proposed approvals are finalized, the area will have a fully approved SIP that meets all of its applicable 1997 8-hour requirements and 1-hour anti-backsliding requirements under section 110 and Part D of the federal Clean Air Act (CAA or Act) for purposes of redesignation.

Additionally, EPA is proposing to approve the post-1996 Rate of Progress (ROP) plan's contingency measures, the substitute control measures for the failure-to-attain contingency measures, and the removal from the Texas SIP of the 1-hour ozone failure-to-attain contingency measure, a VOC SIP rule for marine vessel loading, as meeting the requirements of section 110(l) and part D of the Act.

DATES: Comments must be received on or before June 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2008–0932, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 "Contact Us" Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2008–0932. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in

the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal, which is part of the EPA record, is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Belk, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2164; fax number 214–665–7263; e-mail address *belk.ellen@epa.gov.*

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

Table of Contents

I. What are the actions EPA is proposing?

EPA is proposing several related actions pursuant to the Act for the BPA ozone nonattainment area, consisting of Hardin, Jefferson, and Orange counties. EPA is proposing to determine that the BPA area has attained the 1997 8-hour ozone NAAQS, based on the most recent three years of complete, quality-assured monitoring data. EPA is proposing to find that the BPA area has met the requirements for redesignation under section 107(d)(3)(E) of the Act, and is therefore proposing to approve a request from the State of Texas to redesignate the BPA area to attainment of the 1997 8-hour ozone standard. EPA is also proposing to approve, pursuant to section 175A of the Act, the area's 1997 8-hour ozone maintenance plan as a revision to the Texas SIP; to approve the plan's associated 2021 MVEB; and to approve the 2002 base year emissions inventory. With the approval of the 2002 base year emissions inventory, EPA is proposing to find that the BPA area has satisfied all marginal area requirements for the 1997 8-hour ozone NAAQS. *See* Section VI.B.2. and the Technical Support Document (TSD), Part I.A., for further information on how the BPA area satisfies all the other marginal area requirements. In addition, EPA is proposing to approve the Texas Clean-Fuel Vehicle (CFV) Program Equivalency Demonstration as meeting a serious area anti-backsliding requirement for the 1-hour ozone standard. With the approval of the Texas CFV equivalency determination, we are proposing to find that the BPA has satisfied all 1-hour anti-backsliding requirements for a serious area for the purposes of redesignation. For further information on how the area meets the serious area requirements apart from the CFV Program, please see Section VI.B.1. and the TSD, Part II.A. Further, EPA is proposing to make a determination that the BPA area is meeting the 1-hour ozone standard.

Finally, EPA is proposing to approve the 1-hour ozone post-1996 rate of progress (ROP) plan's contingency measures, substitute measures for the SIP-approved failure-to-attain contingency measures, and the removal from the Texas SIP of the contingency measure, a VOC SIP rule for marine vessel loading, as meeting the requirements of section 110(l) and part D. Each component of this action is discussed in greater detail below.

First, EPA is proposing to make a determination under the Act that the BPA area has attained the 1997 8-hour ozone NAAQS. The BPA area includes three counties in Texas: Hardin, Orange, and Jefferson. This proposed determination is based on complete, quality-assured and certified ambient air quality monitoring data for the 2005–2007 and 2006–2008 ozone seasons that demonstrate that the 1997 8-hour ozone NAAQS has been attained in the area. Data entered into EPA's Air Quality System database (AQS) for 2009, but not yet certified also show that the area continues to attain the standard.

As one of the requirements for approving a redesignation request, EPA is proposing to approve as a revision to the Texas SIP, the State's maintenance

plan for the BPA area as meeting the requirements of section 175A. EPA also is proposing to approve the 2002 base year emissions inventory for the BPA area as meeting a requirement of the Act for a marginal 1997 8-hour ozone area, section 182(a)(1). Additionally, we are proposing to approve the Texas CFV Program Equivalency Demonstration as meeting the serious area requirements of the Act for the 1-hour ozone standard. With the approval of the 2002 base year emissions inventory and the CFV Program Equivalency Demonstration, EPA is proposing to find that the area has met all the applicable 8-hour ozone and 1-hour anti-backsliding requirements of section 110 and part D of the Act for purposes of redesignation, and that the BPA area has a fully approved SIP under section 110(k) for purposes of redesignation.

Based upon the above, EPA is proposing to approve a request from the State of Texas submitted on December 16, 2008, through the Texas Commission on Environmental Quality (TCEQ), to redesignate the BPA area to attainment of the 1997 8-hour ozone standard. If EPA's determination that the area has attained the standard is made final and the BPA area is redesignated to attainment with an approved 8-hour ozone NAAQS maintenance plan, then under the provisions of EPA's ozone implementation rule, the obligations to submit and have an approved 1-hour ozone NAAQS attainment demonstration and reasonably available control measures determination (RACM) and contingency measures no longer apply. As discussed later, BPA was not required to have an 8-hour ozone attainment demonstration because Texas submitted a redesignation request before the area's moderate area SIP requirements, including an attainment demonstration, were due (for more information, please see section VI).

EPA is proposing to determine that the BPA area is meeting the 1-hour ozone standard. This determination is based on complete, quality-assured and certified ambient air quality monitoring data for the 2005–2007 and 2006–2008 monitoring periods which demonstrate that the 1-hour ozone NAAQS has been attained in the area; this determination is also consistent with data for 2009 that are in AQS but not yet certified. The obligations for the state to submit and for EPA to approve a 1-hour serious area attainment demonstration and RACM determination and contingency measures will be suspended if EPA's proposal to determine that the area has attained the 1-hour standard is finalized, and the area will be relieved of these obligations upon final redesignation for the 1997 8-hour ozone standard. *See* 40 CFR 51.905(a)(3)(ii).

Even though the obligations to submit and have approved the 1-hour contingency measures are suspended upon a determination that the area is attaining the 1-hour standard, and terminated upon the BPA area's redesignation to attainment for the 8-hour ozone NAAQS, EPA is proposing to approve the post-1996 ROP plan's contingency measures and the backfill failure-to-attain contingency measures. EPA is proposing this action on the contingency measures because the State is requesting that an existing SIP-approved 1-hour ozone failure-to-attain contingency measures be removed from the SIP, and has not indicated that it wishes to withdraw the contingency measures SIP revision submittals. EPA is proposing to approve the removal from the Texas SIP of the failure-to-attain contingency measure, a VOC SIP rule for marine vessel loading, as meeting the requirements of section 110(l) and part D.

II. What is the background for these actions?

A. What are the National Ambient Air Quality Standards?

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

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

Ozone, a gas composed of three oxygen atoms, at the ground level is generally not emitted directly by sources such as from a vehicle's exhaust or an industrial smokestack; rather, ground level ozone is produced by a chemical reaction between nitrogen oxides (NO_X) and VOCs in the presence of sunlight and high ambient temperatures. NO_X and VOCs are referred to as precursors of ozone. Motor vehicle exhaust and industrial emissions, gasoline vapors, and chemical solvents all contain NO_X and VOCs. Urban areas tend to have high concentrations of ground-level ozone, but areas without significant industrial activity and with relatively low vehicular traffic are also subject to increased ozone levels because wind carries ozone and its precursors many miles from the sources. The Act establishes a process for air quality management through the NAAQS.

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

C. What is the background for the BPA area under the 1-hour ozone NAAQS?

On December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit vacated EPA's attainment date extension policy, which had been applied to extend the 1-hour ozone attainment deadline for the BPA area without reclassifying the area. *Sierra Club* v. *EPA,* 314 F.3d 735 (5th Cir. 2002). Thereupon, EPA on March 30, 2004, withdrew the action extending the attainment deadline for BPA, finalized its finding that the area failed to attain the 1-hour ozone standard by the moderate area deadline, and reclassified the BPA area by operation of law, to serious nonattainment for the 1-hour ozone standard. *See* 61 FR 16483. As a result of its reclassification to serious, the State was required, among other things, to submit by April 29, 2005, a new 1-hour attainment demonstration SIP with an attainment date of November 15, 2005 with new MVEBs and a new RACM analysis, a post-1996 rate of progress (ROP) plan with associated MVEBs and contingency measures, a new clean-fuel vehicle program or substitute, demonstrate the area met RACT, implement the EPA-triggered

failure-to-attain contingency measures, submit a replacement for, i.e., backfill for, the triggered failure-to-attain contingency measures, and to meet the remaining serious area requirements under section 182(c) of the Act. The State submitted the required elements on November 16, 2004, as revised on October 15, 2005, and further revised on December 16, 2008. EPA has approved all of the 1-hour serious area requirements for the BPA area, except for the CFV program, the ROP plan's contingency measures, the replacement failure-to-attain contingency measures, and the attainment demonstration SIP with associated MVEBs and RACM analysis. *See* Section VI.B.1. for further details.

D. What is the background for the BPA area under the 1997 8-Hour Ozone NAAQS?

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm), which is more protective than the previous 1-hour ozone standard (62 FR 38855).[1] The EPA published the 1997 8-hour ozone designations and classifications on April 30, 2004 (69 FR 23858). The BPA area was designated nonattainment and initially classified as marginal. The area includes three counties: Hardin, Jefferson, and Orange counties (these constitute the former 1-hour ozone nonattainment area). The effective date of designation for the 1997 8-hour ozone NAAQS was June 15, 2004. Under the marginal nonattainment designation, the latest attainment date for the BPA area was June 15, 2007. The BPA did not monitor attainment of the 1997 8-hour ozone NAAQS by the June 15, 2007 deadline, based upon complete, quality-assured and certified ambient air quality monitoring data for the 2004–2006 ozone seasons. The BPA area already met all of the requirements for a 1997 8-hour ozone marginal area except for the base year emissions inventory requirement. *See* Section VI.B.2. for further details.

Therefore, EPA determined that the BPA area had failed to attain the 1997 8-hour ozone standard by the applicable attainment deadline and the area was reclassified by operation of law as a moderate 1997 8-hour ozone nonattainment area, effective April 17, 2008 (73 FR 14391). This determination was based on ambient air quality data from the 2004–2006 monitoring period. More recent air quality data for the 2005–2007 and 2006–2008 monitoring periods, as well as 2009 data that are in AQS but not yet certified, however, indicate that the BPA area is now attaining the 1997 8-hour ozone standard. *See* Section V.A.

The deadline for submission of requirements to meet the area's new 8-hour moderate nonattainment area classification was January 1, 2009 (73 FR 14391). The TCEQ, on December 16, 2008, submitted a request that EPA determine that the BPA area has attained the 1997 8-hour ozone standard and redesignate it to attainment. The request included a maintenance plan with associated MVEBs, the 2002 base year emission inventory, the Texas CFV Program Equivalency Demonstration, and the backfill failure-to-attain contingency measures. The complete redesignation request was received by EPA before the deadline for submittal of the moderate area SIP requirements for the BPA area under the 1997 8-hour ozone standard.

III. What are the impacts of the court decisions on EPA's Phase 1 and 2 implementation rules upon the BPA area redesignation request?

A. Summary of the Court Decisions

This section sets forth EPA's views on the effect of the DC Circuit's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, June 8, 2007, and July 10, 2009, decisions impose no impediment to moving forward with redesignation of this area to attainment of the 1997 8-hour ozone NAAQS.

EPA published a first phase rule governing implementation of the 1997 8-hour ozone standard (Phase 1 Rule) on April 30, 2004 (69 FR 23951). The Phase 1 Rule addresses classifications for the 1997 8-hour NAAQS and for revocation for the 1-hour NAAQS; how anti-backsliding principles will ensure continued progress toward attainment of the 1997 8-hour NAAQS; attainment dates; and the timing of emissions reductions needed for attainment. The Phase 1 Rule revoked the 1-hour ozone standard. The Phase 1 Rule also provided that 1-hour ozone nonattainment areas are required to adopt and implement "applicable requirements" according to the area's classification under the 1-hour ozone standard for anti-backsliding purposes. See 40 CFR 51.905(a)(i). On May 26, 2005, we determined that an area's 1-hour designation and classification as of June 15, 2004 would dictate what 1-hour obligations remain as "applicable requirements" under the Phase 1 Rule. 40 CFR 51.900(f). (70 FR 30592).

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

EPA published a second rule governing implementation of the 1997 8-hour ozone standard (Phase 2 Rule) on November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727). The Phase 2 Rule addresses, among other things, the Clean Data Policy as codified in 40 CFR 51.918. The DC Circuit upheld the Clean Data Policy, agreeing with the Tenth Circuit that EPA's interpretation of the Act was reasonable. *NRDC* v. *EPA,* 571 F.3d

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

1245 (DC Cir. 2009). *See Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996).

B. Summary of EPA's Analysis of the Impact of the Court Decisions on the BPA Area

1. Requirements Under the Eight-Hour Ozone Standard

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

2. Requirements Under the One-Hour Ozone Standard

In its June 8, 2007, decision, the Court limited its vacatur so as to uphold those provisions of EPA's anti-backsliding requirements that were not successfully challenged. Therefore, an area must meet the anti-backsliding requirements, *see* 40 CFR 51.900, *et seq.;* 70 FR 30592, 30604 (May 26, 2005), which apply by virtue of the area's classification for the one-hour ozone NAAQS.

The provisions in 40 CFR 51.905(a)–(c) explain the applicable 1-hour ozone anti-backsliding requirements that remain in effect. Areas must continue to meet those requirements to be redesignated. However, the court vacated the portions of 51.905(e) that removed the obligations to meet the additional provisions noted above and as a result, states also have had to continue to meet these additional requirements. We address below how the 1-hour anti-backsliding obligations (as interpreted and directed by the court) are met in the context of a redesignation action for the 1997 8-hour NAAQS.

The BPA 1-hour nonattainment area was reclassified as serious for that standard on June 15, 2004, so the 1-hour ozone standard requirements applicable to the area are those that apply to nonattainment areas classified as serious. Pursuant to 40 CFR 51.905(a)–(c) and the court opinions, the applicable serious area requirements include a demonstration that the area meets serious area Reasonably Available Control Technology (RACT) for both VOC and NO_X, a revised 1990 base year emissions inventory, a Post-1996 Rate of Progress (ROP) Plan with Contingency Measures and MVEB, a replacement, i.e., a backfill, for the failure-to-attain contingency measures triggered by the reclassification (this is equivalent to the requirement to meet the serious area contingency measure requirement), an enhanced monitoring program, a clean-fuel vehicle program or an acceptable substitute, an attainment demonstration with a reasonably available control measures (RACM) demonstration, revised transportation conformity budgets, and serious area NSR. The State has submitted each of the required 1-hour serious area plan requirements. EPA has approved each of the 1-hour serious area requirements except for the following: The attainment demonstration and RACM analysis, the CFV program or acceptable substitute, the ROP plan's contingency measures, the backfill failure-to-attain contingency measures, and the serious NSR requirements. The obligations to have an approved 1-hour ROP plan's contingency measures, backfill failure-to-attain contingency measures, and attainment demonstration with a RACM demonstration would be suspended by a determination of attainment of the 1-hour ozone standard, and will cease to apply upon redesignation of the area for the 8-hour standard. The 1-hour anti-backsliding serious Nonattainment New Source Review (NNSR) will also cease to apply upon redesignation for the 1997 8-hour ozone standard, and will be replaced by prevention of significant deterioration (PSD) SIP.

EPA is proposing to approve the following outstanding 1-hour ozone applicable requirement: The Texas CFV Program Equivalency Demonstration. EPA also is proposing to approve the Post-1996 ROP plan's contingency measures and the State's backfill failure-to-attain contingency measures. EPA has taken no action on the submitted attainment demonstration with the RACM analysis and serious 1-hour ozone NSR requirements. In lieu of nonattainment NSR, the BPA area will become subject to PSD upon redesignation.

For the BPA 1-hour ozone serious nonattainment area, EPA previously approved VOC and NO_X rules into the Texas SIP, found they met RACT, and found that the BPA area meets the serious area VOC and NO_X RACT requirements. EPA also previously approved the revised 1990 base year emissions inventory, the post-1996 ROP plan and MVEB, and the enhanced monitoring program. In this rulemaking, EPA is proposing to approve the State's CFV Equivalence Demonstration as meeting the outstanding 1-hour ozone anti-backsliding serious area requirement for the area. We also are proposing to approve the post-1996 ROP plan's contingency measures and the backfill failure-to-attain contingency measures. The obligation to submit a 1-hour serious area attainment demonstration and RACM analysis and contingency measures will be suspended if EPA's proposal to determine that the area has attained the 1-hour standard is finalized, and the area will be relieved of these obligations upon final redesignation for the 1997 8-hour ozone standard.

IV. What are the CAA criteria for redesignation?

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

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

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, June 18, 1990.

2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

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

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

Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

6. "Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas", Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992", Memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

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

V. What is EPA's proposed determination degarding attainment for the 1997 8-hour and the 1-hour ozone NAAQS for the BPA area?

A. Is the BPA area attaining the 1997 8-hour ozone NAAQS?

For ozone, an area may be considered to be attaining the 1997 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. This standard is attained if the 3-year average of the annual fourth highest daily maximum 8-hour average ambient ozone concentration at each monitor in the area that is eligible for comparison to the NAAQS is less than or equal to 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the 1997 8-hour ozone standard is attained at a monitor if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment. For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm $\times$ 1,000. Thus, 0.084 ppm equals 84 ppb.

EPA reviewed BPA area ozone monitoring data from ambient ozone monitoring stations for the ozone seasons 2005 through 2007, as well as data for the ozone seasons 2006 through 2008 and data for 2009 in AQS but not yet certified. The 2005–2007 ozone season data was relied upon by Texas in its submittal. Since the State's submittal, the 2006–2008 ozone season data has been quality assured and recorded in AQS. The design value for 2005–2007 is 0.083 ppm; the design value for 2006–2008 is 0.081 ppm. The preliminary design value for the additional year of 2009, i.e., the 2007–2009 ozone seasons, is 0.077 ppm. The data for all three sets of ozone seasons show that the BPA area is attaining the 1997 8-hour ozone NAAQS.

Table 1 provides the design values based on data from the nine monitors in the BPA area. Each of the nine monitoring sites in the BPA area monitored attainment with the 1997 8-hour ozone standard for the 2005–2007 ozone seasons and for the 2006–2008 ozone seasons. (To find the overall design value for the area for a given year, simply find the highest design value from any of the nine monitors for that year.) The location of each monitoring site in the BPA area is shown on the map entitled, "BPA ozone and ozone precursor monitoring network" included in the docket associated with this action.

TABLE 1—BPA AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES DATA FOR ALL MONITORS (PPM) [1] [2] [3] [4]

BPA monitor site	4th Highest daily max					Design values three year averages		
	2005	2006	2007	2008	2009	2005–2007	2006–2008	2007–2009
Lamar (48–245–0009)	0.081	0.085	0.080	0.072	0.071	0.082	0.079	0.074
Port Arthur (48–245–0011)	0.079	0.085	0.073	0.071	0.073	0.079	0.076	0.072
Sabine Pass (48–245–0101)	0.082	0.084	0.078	0.069	0.073	0.081	0.077	0.073
Hamshire (48–245–0022)	0.080	0.081	0.077	0.070	0.070	0.079	0.076	0.072
West Orange (48–361–1001)	0.078	0.078	0.073	0.064	0.073	0.076	0.071	0.070
Mauriceville (48–361–1100)	0.076	0.071	0.075	0.069	0.067	0.074	0.071	0.070
Jefferson Co. Airport (48–245–0018)	0.083	0.084	0.082	0.078	0.071	0.083	0.081	0.077
SETRPC Port Arthur (48–245–0628)	0.078	0.082	0.076	0.065	0.069	0.078	0.074	0.070
Nederland (48–245–1035) [4]	.....	0.068	0.082	0.067	0.069	.....	0.072	0.072

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

[2] Monitoring site locations for BPA are shown on a map entitled, "BPA ozone and ozone precursor monitoring network" included in the docket.

[3] Monitoring data for 2009 are in AQS but not yet certified (as of March 26, 2010).

[4] Monitoring did not begin at the Nederland site until 2006.

The fourth high values for 8-hour ozone for 2005 through 2009, and the 3-year average of these values (i.e., design value), are summarized in Table 2:

TABLE 2—BPA AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES DATA SUMMARY (PPM) [1] [2] [3]

BPA area overall	4th highest daily max					Design values three-year averages		
	2005	2006	2007	2008	2009	2005–2007	2006–2008	2007–2009
	0.083	0.084	0.082	0.078	0.071	0.083	0.081	0.077

[1] Unlike for the 1-hour ozone standard, design value calculations for the 8-hour ozone standard are based on a rolling three-year average of the annual 4th highest values (40 CFR Part 50, Appendix I).
[2] Monitoring data for 2009 are in AQS but not yet certified (as of March 26, 2010).
[3] The fourth high data in this table is from the Jefferson Co. Airport monitor site (AQS 48–245–0018).

As shown in Table 2, the 8-hour ozone design value for 2005–2007, and also for 2006–2008, which is based on a three-year average of the fourth-highest daily maximum average ozone concentration at the monitor recording the highest concentrations, is below the 1997 8-hour ozone NAAQS. The design values of 0.083 ppm for 2005–2007 and 0.081 ppm for 2006–2008 demonstrate the area is in attainment of the 1997 8-hour ozone NAAQS. Data through 2008 have been quality assured, as recorded in AQS. Data for 2009 not yet certified also indicate that the area continues to attain the 1997 8-hour NAAQS. The preliminary design value for the BPA area for 2007–2009 is 0.077 ppm. In summary, monitoring data for BPA for the three years 2005 through 2007, as well as monitoring data for the three years 2006 through 2008 and preliminary monitoring data for 2009, show continued attainment of the 1997 8-hour ozone standard. Preliminary data for BPA for 2009 is included in the docket.

In addition, as discussed below with respect to the maintenance plan, Texas has committed to continue monitoring in this area in accordance with 40 CFR part 58. In summary, EPA is proposing to determine that complete, quality-assured data for the 2005–2007 and 2006–2008 ozone seasons show that the BPA 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS and data for 2009 in AQS but not yet certified show that the area continues to attain the standard.

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

B. Is the BPA area attaining the 1-hour ozone NAAQS?

EPA is also proposing to determine that the BPA 1-hour ozone nonattainment area is currently attaining the 1-hour ozone NAAQS. This determination is based upon three years of complete, quality-assured and state- certified ambient air monitoring data that show the area has monitored attainment of the 1-hour ozone NAAQS for the 2006–2008 monitoring period. Data for 2009 in AQS but not yet certified indicate that that the area continues in attainment for the 1-hour standard.

In 1979, EPA promulgated the revised 1-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979). For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm $\times$ 1000. Thus, 0.12 ppm becomes 120 ppb or 124 ppb when rounding is considered.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.12 ppm in any given day. Only the highest 1-hour ozone concentration at the monitor during any 24-hour day is considered when determining the number of exceedance days at the monitor. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 expected exceedances occur at the same monitor. For more information, please see "National 1-hour primary and secondary ambient air quality standards for ozone" (40 CFR 50.9) and "Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone" (40 CFR Part 50, Appendix H).

The fourth-highest daily ozone concentration over a 3-year period is called the design value (DV). The DV indicates the severity of the ozone problem in an area; it is the ozone level around which a state designs its control strategy for attaining the ozone standard. A monitor's DV is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's DV is the highest of the design values from the area's monitors.

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991).

EPA is proposing to determine that the BPA 1-hour ozone nonattainment area is currently in attainment of the 1-hour standard based on the most recent 3 years of quality-assured air quality data. Certified ambient air monitoring data show that the area has monitored attainment of the 1-hour ozone NAAQS for the 2005–2007 as well as the 2006–2008 monitoring period. Also, data in AQS but not yet certified for 2009 show that the BPA area has monitored no exceedances in that year and continues to meet the 1-hour ozone standard. Table 3 contains the 1-hour ozone data for the BPA 1-hour ozone nonattainment area monitors that show that the area is currently attaining the 1-hour ozone NAAQS, consistent with 40 CFR Part 50, Appendix H.

TABLE 3—BEAUMONT-PORT ARTHUR AREA 1-HOUR OZONE DATA [1] [2]

BPA Monitor site	Number of exceedances					3-year exceedances			Design values (ppb)		
	2005	2006	2007	2008	2009	2005–2007	2006–2008	2007–2009	2005–2007	2006–2008	2007–2009
Lamar (48–245–0009)	0	0	0	0	0	0	0	0	106	106	98
Port Arthur (48–245–0011)	0	0	0	0	0	0	0	0	104	101	93
Sabine Pass (48–245–0101)[2]	1.2	0	0	0	0	0.4	0	0	107	102	96
Hamshire (48–245–0022)	0	0	0	0	0	0	0	0	97	97	95
West Orange (48–361–1001)	0	0	0	0	0	0	0	0	99	100	100
Mauriceville (48–361–1100)	0	0	0	0	0	0	0	0	96	96	87
Jefferson Co. Airport (48–245–0018)	0	0	0	0	0	0	0	0	104	102	99
SETRPC Port Arthur (48–245–0628)	0	0	0	0	0	0	0	0	98	98	95
Nederland (48–245–1035)		0	0	0	0		0	0		93	93

[1] Monitoring data for 2009 are in AQS but not yet certified (as of March 26, 2010).
[2] For the Sabine Pass site in 2005 the actual number of exceedances was 1 and the estimated number of exceedances was 1.2.

EPA proposes to find that the BPA 1-hour ozone nonattainment area has attained the 1-hour ozone standard.

VI. Does the BPA area have a fully approved SIP under section 110(k) for the section 110 and part D requirements of the CAA applicable for purposes of redesignation?

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

Therefore, the applicable 1997 8-hour ozone standard requirements for the BPA area are those for a marginal, not a moderate nonattainment area. The State submitted a complete redesignation request for BPA on December 16, 2008, prior to the January 1, 2009 deadline for the submittal of the area's moderate area SIP requirements. Furthermore, since EPA is proposing to determine that the area has attained the 1997 8-hour ozone standard, under the principles enunciated in the General Preamble and pursuant to 40 CFR 51.918, if that determination is finalized, then the obligations to submit requirements related to attainment and RFP are not applicable for purposes of redesignation.

The requirements to submit for a moderate area, certain planning SIPs related to attainment, including attainment demonstration requirements [the reasonably available control measures (RACM) requirement of section 172(c)(1) of the Act, the reasonable further progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the Act, and the requirement for contingency measures of section 172(c)(9) of the Act] would not be applicable to the area as long as it continues to attain the 1997 8-hour ozone NAAQS and would cease to apply upon redesignation to attainment.

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

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

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

Today, EPA is also proposing to approve the 2002 base year emissions inventory as meeting the marginal area applicable requirements of part D. In addition, EPA is proposing to approve the CFV program Equivalency Demonstration as meeting the only outstanding 1-hour ozone anti-backsliding obligation for purposes of redesignation. Furthermore, EPA is proposing to find that upon final approval of these two measures, the BPA area will have a fully approved SIP under CAA section 110(k) for redesignation purposes and it will meet all CAA section 110 and part D applicable requirements for purposes of redesignation for the 1997 8-hour ozone standard.

A. What are the general SIP requirements applicable for purposes of redesignation for the BPA area?

EPA's long-held interpretation of the Act is that section 110 general SIP elements not linked to an area's nonattainment status and classification are not applicable for purposes of redesignation. Section 110(a)(2) of title I of the Act delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations.

For example, CAA section 110(a)(2)(d) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states, but not Texas, to establish programs to address the

transport of air pollutants (NO_X SIP Call). Texas submitted a SIP revision to address interstate transport on May 1, 2008. The purpose of that SIP revision was to document that emissions from Texas' sources that may contribute to nonattainment in another state have been mitigated through existing control strategies. However, CAA section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation.

Further, EPA believes that the other CAA section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request.

We have reviewed Texas's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Texas SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.2270–.2280). Further, in a certified letter dated April 4, 2008 (a copy of this letter and the enclosure to the letter are available in the docket), as well as in a SIP revision submitted May 1, 2008, Texas confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on these submittals; however, such approval is not necessary for redesignation.

B. What are the part D requirements applicable for purposes of redesignation for the BPA area?

EPA has reviewed the Texas SIP for the BPA area with respect to SIP requirements applicable for purposes of redesignation under part D of the Act for both the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. EPA believes that the Texas SIP for the BPA area contains approved SIP measures that meet the part D requirements applicable for purposes of redesignation, with the exception of the requirements for an approved emissions inventory and the CFV program Equivalency Demonstration, which we are proposing to approve in this rulemaking. Upon final approval of these requirements, the BPA area will meet all of the requirements applicable to the area for purposes of redesignation under part D of the Act.

The 1-hour and 1997 8-hour ozone applicable requirements are discussed in detail below.

1. What are the part D requirements applicable for purposes of redesignation for the BPA area under the 1-hour ozone standard?

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

The area remains subject to the obligations to adopt and implement the applicable requirements defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section and except as provided in paragraph (b) of this section.

Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), provides that: Applicable requirements means that for an area that the following requirements, to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the CAA for the one-hour NAAQS at the time of designation for the eight-hour NAAQS, remain in effect:

(1) Reasonably available control technology (RACT).

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

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

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

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

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

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

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

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

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

(12) NO_X requirements under section 182(f) of the CAA.

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

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

Pursuant to 40 CFR 51.905(c), the area is subject to the obligations set forth in 51.905(a) and 51.900(f). The following addresses the one-hour ozone SIP requirements applicable to the BPA area pursuant to these anti-backsliding requirements and those discussed in the Court's decision in *South Coast Air Quality Management Dist.* v. *EPA.*

Prior to the revocation of the one-hour ozone standard on June 15, 2005, the BPA area was classified as a serious nonattainment area for the one-hour ozone standard with a compliance date of November 15, 2007. In reviewing the State of Texas' 1997 8-hour ozone redesignation request for the BPA area, we assessed whether the area satisfied the CAA anti-backsliding requirements under the one-hour ozone standard. We conclude that the BPA area and the State of Texas have satisfied all anti-backsliding CAA requirements applicable to a serious one-hour ozone nonattainment area for purposes of redesignation, except for the CFV program or an acceptable substitute under section 183(c)(4) of the CAA. *See* 40 CFR 51.905 (6). Today, we are proposing to approve the State's equivalency CFV demonstration. *See* below.

The following discusses how the applicable CAA requirements have been met in the BPA area. Note that the State commits to continue to comply with these requirements unless revised through SIP revisions approved by the EPA.

40 CFR 51.905 (1) and (3). RACT and Major source applicability cut-offs for purposes of RACT. EPA found that the BPA area met the serious area VOC and

NO_X RACT requirements for the 1-hour standard on July 10, 2009 (74 FR 33146). This action also approved Texas' changes to the batch process rules and the shipbuilding and ship repair rules that lower the threshold for affected sources of VOC emissions to the serious area requirements of 50 tons per year (tpy). This July 10, 2009 approval action satisfies the 1-hour ozone serious RACT requirements for the BPA area.

40 CFR 51.905 (2). Inspection and maintenance programs (I/M). There is no requirement for the BPA area to have an I/M program. The Federal I/M Flexibility Amendments of 1995 determined that urbanized areas with populations less than 200,000 for 1990 (such as BPA) are not mandated to participate in the I/M program (60 FR 48033, September 18, 1995).

40 CFR 51.905 (4). Rate of progress reductions. We approved the post-1996 ROP Plan and its associated MVEB and a revised 1990 base year emissions inventory on February 22, 2006 (71 FR 8962) for the BPA serious 1-hour ozone nonattainment area. This plan covered the 3-year periods of 1997–1999, 2000–2002, and 2003–2005, achieving 27 percent reductions no later than November 15, 2005.

40 CFR 51.905 (5) Stage II vapor recovery. EPA approved Texas' Stage II rules and amendments for the BPA area on April 15, 1994 (59 FR 17940), and as revised on March 29, 2005 (70 FR 15769).

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

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

40 CFR 51.905 (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA. EPA approved the Texas SIP revision for enhanced ambient monitoring on October 4, 1994 (59 FR 50504) as meeting section 182(c)(1) of the CAA. The monitoring network meets the requirements in 40 CFR Part 58 and section 182(c)(1) for enhanced monitoring.

40 CFR 51.905 (10) TCMs under section 182(c)(5) of the CAA. As required by the Clean Air Act section 176(c) (42 U.S.C. 7506(c)), the Southeast Texas Regional Planning Commission, the Metropolitan Planning Organization for the BPA area, demonstrated conformity of area transportation plans to the motor vehicle emissions budgets established in the BPA Rate-of-Progress SIP approved by EPA on February 22, 2006 (71 FR 8962). The Federal Highway Administration determined on September 25, 2007 that the area transportation plans conformed to the budgets established by the SIP. The current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters were determined, as part of the conformity analysis, to be consistent with those used for the area's demonstration of progress towards attainment.

40 CFR 51.905 (11) Vehicle miles traveled (VMT) provisions of section 182(d)(1) of the CAA. This is a severe area requirement and therefore does not apply to the BPA serious area.

40 CFR 51.905 (12) NO_X requirements under section 182(f) of the CAA. These requirements were satisfied by a previous EPA action approving a Texas SIP revision for NO_X controls in the BPA area on March 3, 2000 (65 FR 11468).

40 CFR 51.905 (13) Attainment demonstration or alternative as provided under section 51.905(a)(1)(ii). Texas elected the option to submit an 8-hour ozone attainment demonstration SIP to demonstrate attainment of the 8-hour ozone standard by the area's 8-hour ozone attainment date with associated MVEBs and an RACM analysis. The SIP was submitted to EPA on November 16, 2004, as revised on October 15, 2005. EPA has not acted on it. As discussed previously, EPA's long-held position is that an attainment demonstration with the RACM analysis is not an applicable requirement for purposes of evaluating an ozone redesignation request. (General Preamble, 57 FR 13564.) *See* also 40 CFR 51.918. Upon the effective date of redesignation, the obligation is terminated. Moreover EPA is proposing to determine that the area has attained the 1-hour ozone standard, and for that reason as well, if the determination is finalized, the area would not be obligated to submit a 1-hour attainment demonstration.

South Coast Anti-Backsliding Measures

NSR. EPA has long held its position that a fully-approved NSR program is not an applicable requirement for purposes of evaluating an ozone redesignation request. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation dated October 14, 1994, titled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." The State's PSD program becomes effective in the area immediately upon redesignation to attainment.[2] Consequently, EPA concludes that an approved NSR program is not an applicable requirement for purposes of redesignation. See the more detailed explanations of this issue in the following rulemakings: Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR 31831, 31836–31837, June 21, 1996).

Section 185 fees. This is a requirement for severe and extreme areas only, and therefore does not apply to the BPA serious area.

Contingency Measures. Sections 172(c)(9) and 182(c)(9) of the CAA require ozone control plans to contain measures to be implemented in the event that any RFP or attainment milestone in the ozone control plan is missed. EPA approved the 1-hour ozone contingency measures for the BPA area on February 10, 1998 at 63 FR 6659 as part of EPA's approval of the BPA area's 1-hour ozone 15% VOC ROP Plan. These contingency measures included the Federal Tier I rules, the Federal small engine VOC rule, and excess reductions from the 15% VOC ROP Plan. When EPA reclassified the BPA area to serious for the 1-hour ozone NAAQS, these are the contingency measures that EPA triggered. EPA is proposing to approve the post-1996 ROP plan's associated contingency measures, submitted to EPA on November 16, 2004. The contingency measures are federal and state measures already being implemented that are in excess of those needed for ROP and are sufficient to provide the needed contingency measure reductions. For more information, *please see* Section X. and TSD Part II.E. found in the electronic docket.

As noted elsewhere in this proposed rule, it is EPA's position that contingency measures are not an applicable requirement for purposes of evaluating an ozone redesignation request. EPA's long-held position is that those requirements expressly linked by statutory language with the attainment and reasonable further progress do not apply when an area requesting redesignation is attaining the standard.

For more detail of the applicable 1-hour ozone requirements and EPA's approval actions, see Part II.A. of the

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

TSD, which is included in the electronic docket.

As previously noted, it is EPA's position that further EPA action is required upon one 1-hour ozone serious area requirement: The CFV program or substitute. A summary of the Texas submittals and EPA's proposed action follows. More detail on the contents of the submittals and EPA's technical analysis may be found in the TSD, Part II.A.

Clean-Fuel Vehicle Program (Including Centrally Fueled Fleets Requirements)

(i) What are the Clean-fuel vehicle program requirements?

The 1990 CAA amendments established the clean-fuel vehicle (CFV) program that requires clean alternative fuels for a "covered fleet" in order to reduce emissions in certain ozone and carbon monoxide nonattainment areas. A "covered fleet" means a fleet that has ten or more vehicles that are either centrally fueled or capable of being centrally fueled. For serious ozone nonattainment areas, States are required to either adopt the CFV program prescribed under CAA part C of title II, or implement a substitute for the program that demonstrates equivalent long-term reductions in ozone-producing emissions within 1 year after reclassification (CAA sections 182(c)(4) and 246(a)(3)). CAA section 246 describes the requirements for Centrally Fueled Fleets (CFF). EPA may adjust the compliance deadlines where compliance with such deadlines would be infeasible. (CAA section 246(a)(3).) Currently, the federal CFF program requires 70% of new light duty vehicles and trucks and 50% of new heavy-duty vehicles in a covered fleet to meet certain prescribed exhaust emission standards for light duty vehicles, light duty trucks and heavy-duty vehicles. (CAA section 246(b)(3).) EPA has determined that, beginning with the 2006 model years, both the Tier II conventional vehicle and engine standards and heavy-duty vehicle and engine standards are either equivalent to or more stringent than the applicable CFV program Low Emission Vehicle (LEV) standards. *See* EPA Dear Manufacturer Letter CCD–05–12 (LDV/LDT/MDPV/HDV/HDE/LD–AFC) (July 21, 2005).

(ii) What are the CFV program requirements for the BPA area?

The March 30, 2004, reclassification of the area to serious nonattainment was effective April 29, 2004, and required that a CFV program or substitute that would achieve equivalent reductions be submitted to EPA by April 29, 2005.

(iii) How did the State Meet the CFV Requirements for BPA?

The State addresses this CFV program requirement by making an equivalency demonstration showing that the Federal Tier II and heavy-duty vehicle and engine standards are more stringent than or equivalent to the CFV program LEV standards, beginning with the 2006 model year. Texas used the 2006 model year in the equivalency demonstration because it is the earliest full vehicle model year that would have been affected by a CFV program upon adoption of a program by April 29, 2005 (i.e., the 2006 model year would begin on September 1, 2005). The demonstration showed that the resulting emissions reductions from Tier II and the heavy-duty vehicle and engine standards meet or exceed the emissions reductions that a CFV program would provide in the BPA nonattainment area and, therefore, the implementation of the Tier II and heavy-duty standards serve as an adequate substitute for a CFV program.

Specifically, relying upon EPA's data, beginning with the 2006 model year, Texas shows Tier 2 Light-Duty Vehicles (LDVs), Light-Duty Trucks (LDTs 1–4), and Medium Duty Passenger Vehicles (MDPVs) certified to certain Tier 2 bin standards, to be equivalent to or more stringent than the CFV program LEV emission standards. In addition, Texas demonstrates that Tier 2 LDVs, LDTs 1–4, and MDPVs certified to other Tier 2 bin standards, are equivalent to or more stringent than the CFV program LEV emission standards. Texas performs a similar analysis, showing that standards for 2006 and later model years for Otto cycle and diesel heavy-duty vehicles ranging from 8501–14,000 Gross Vehicle Weight Rating are more stringent than the CFV program LEV emissions standards for these vehicles.

(iv) What is EPA proposing?

EPA is proposing to approve, under section 182(c)(4)(B) of the CAA, Texas' equivalency demonstration that emissions reductions under Tier II and the heavy-duty engine and vehicle standards achieve equivalent or greater emissions reductions than would be expected from implementation of the CFV Program in the BPA nonattainment area. This approval is supported by the determination made by EPA that the use of the 2006 model year as the first model year vehicles that would be covered by a CFV program in the equivalency demonstration is appropriate. Thus, new vehicles purchased by fleet operators for Model Years 2006 and beyond would necessarily achieve, as required by the Tier II and heavy-duty engine standards, as much or more reductions than if the State adopted a CFV program as required by the Act.

The reclassification required the program to be submitted by April 29, 2005. EPA has determined that starting the program on April 29, 2005 is infeasible under CAA section 246(a)(3) which allows EPA to adjust the implementation date of a CFV program where implementation would otherwise be infeasible. EPA has decided that implementation of a CFV program in the BPA nonattainment area would be infeasible for the following reasons. As earlier explained, as of July 2005, EPA had determined that beginning with the 2006 model year the Tier II and heavy-duty engine and vehicle standards were either equivalent or more stringent than the CFV program LEV standards. Thus, Texas would have been required to implement the CFV program for approximately 4 months (i.e., from April 29, 2005, when the program was due under the reclassification, to August 31, 2005 when the 2006 model year began). For model years 2006 and beyond, the program would have been unnecessary. EPA believes that it would have been infeasible for Texas to initiate and oversee the elaborate record-keeping and reporting requirements associated with this program for this 4-month period only. Additionally, we note that owners and operators of covered fleet would likely not have been inclined to comply with the requirements of a program with such limited duration. Please see the TSD: Part II.A. for further discussion of this requirement.

As noted above, with the exception of the CFV program, the BPA area currently has an approved SIP for all the 1-hour ozone anti-backsliding requirements applicable for purposes of redesignation. EPA is proposing to find that, if it finalizes approval of the CFV program Equivalency Demonstration, the BPA area will meet all 1-hour ozone anti-backsliding requirements applicable to the area for purposes of redesignation under section 110 and part D.

2. What are the part D requirements applicable for purposes of redesignation for the BPA area under the 1997 8-hour ozone standard?

Part D, subpart 2 applicable SIP requirements. For the reasons set forth above, no moderate area requirements applicable for purposes of redesignation for the 1997 8-hour ozone standard under part D, section 182(b) became due prior to the submission of the complete redesignation request, and therefore none are applicable to the Area for purposes of redesignation. If EPA

finalizes its proposed approval of the area's emissions inventory under section 182(a)(1), the area will have met all the requirements applicable under its prior marginal classification for purposes of redesignation.

In addition to the fact that no moderate area part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

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

*NSR Requirement*s. EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect, since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment." Texas has demonstrated that BPA will be able to maintain the standard without a part D NSR program in effect, and therefore, Texas need not have a fully approved part D NSR program prior to approval of the redesignation request. Texas's PSD program will become effective in BPA upon redesignation to attainment (unless a rule change is necessary; *see* footnote 2). See, rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 182(a)(1) Inventory requirements. The marginal requirements at section 182(a) and 40 CFR 51.915 require that the BPA 8-hour ozone area meet the emissions inventory requirements of section 182(a)(1). An emissions inventory is an estimation of actual emissions of air pollutants in an area. The emissions inventory consists of VOC and NO_X emissions, as they are ozone precursors.

The State submitted a base year emissions inventory on December 18, 2008 to EPA as part of the SIP revision for the BPA area. Texas prepared a comprehensive emissions inventory for the BPA for the baseline year of 2002. The 2002 base year emissions inventory includes all point, area, nonroad mobile, and on-road mobile source emissions. Table 4 lists the 2002 emissions inventory for the BPA area. EPA reviewed the 2002 base year inventory and determined that it was developed in accordance with EPA guidelines. For a full discussion of our evaluation, please refer to Part I.B. of the TSD, found in the electronic docket.

TABLE 4—BPA BASE YEAR EMISSION INVENTORY

[Tons/day]

2002 Base year inventory		
Source type	NO_X	VOC
Point	109.23	43.81
Area	7.54	50.11
On-road Mobile	45.84	13.32
Non-road Mobile	48.99	13.85
Total	211.60	121.09

EPA is proposing to approve the 2002 Base Year Emissions Inventory submitted by the State on December 18, 2008 as part of the Texas SIP for the BPA area. With the approval of the 2002 base year emissions inventory, it is EPA's position that the BPA area will meet all of the requirements for a marginal nonattainment area under the 1997 8-hour ozone standard.

Listed below are the other marginal area requirements that have already been met by the BPA area. For further information, please see Part II.A. of the TSD.

Section 182(a)(2)(A) RACT corrections. EPA approved the Texas RACT correction rules on March 7, 1995 at 60 FR 12438.

Section 182(a)(2)(B) I/M Program. There is no requirement for the BPA area to have an I/M program. The Federal I/M Flexibility Amendments of 1995 determined that urbanized areas with populations less than 200,000 for 1990 (such as BPA) are not mandated to participate in the I/M program (60 FR 48033, September 18, 1995).

Section 182(a)(2)(C) Permit programs and 182(a)(4) General Offset requirement. As noted previously, EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect, since PSD requirements will apply after redesignation.

Section 181(a)(3)(B) Emissions Statements. The emissions statement rules were approved on August 26, 1994 (59 FR 44036).

Thus, EPA proposes to find that the area has an approved SIP for all the 1997 8-hour ozone requirements applicable for purposes of redesignation, with the exception of the 2002 Base Year Emissions Inventory. EPA is proposing to find that, upon EPA's final approval of the BPA emissions inventory, the BPA area will meet all requirements applicable to the area for purposes of redesignation under section 110 and part D and have a fully approved applicable implementation plan for the area under section 110(k).

C. Does the BPA area have a fully approved applicable SIP under section 110(k) of the CAA for purposes of redesignation?

With the exceptions noted above for the 1-hour ozone CFV program and the 8-hour emissions inventory, EPA has fully approved the applicable Texas SIP for the BPA area, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request; *see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. *See,* 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Texas adopted and

submitted, and EPA fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the BPA area (e.g., 74 FR 33146, 71 FR 8962, 66 FR 26914, 63 FR 6659, 60 FR 12438).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the moderate area part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation. As set forth above, with the two exceptions noted, the area has met all other applicable requirements for purposes of redesignation under its prior marginal classification. Once EPA has finalized approvals of the 1-hour CFV program Equivalency Demonstrations and the 8-hour base year inventory, the area will have met all applicable requirements for purposes of redesignation for the 8-hour ozone standard.

VII. Are the air quality improvements in the BPA area due to permanent and enforceable emissions reductions?

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

In making this demonstration, the State presented several sets of data. First, the State provided a 2002 Periodic Emissions Inventory (PEI) for NO_X and VOC in the BPA area, and provided a comparison between the 2002 PEI and the 2005 Base EI. Second, the State analyzed the changes in VOC and NO_X emissions in the BPA area between the ozone standard violation year 2002 and one of the years in the period during which the area attained the standard, 2005. Finally, the State documented the VOC and NO_X emission control measures that have been implemented in the BPA area over the past 17 years.

A. Emissions Reductions as Shown by Emissions Inventory Data

Texas chose 2005 as the base attainment year, and compared 2002 VOC and NO_X emissions when the DV was 90 ppb, to the attainment year emissions, to show that emission reductions have occurred in the area, and have resulted in the ozone air quality improvement in the area. 2005 is the first year of the first three-year period demonstrating attainment. By 2005, NO_X emissions were estimated to have dropped by almost 30% and VOC emissions by 15% from 2002 levels. These significant decreases resulted in the improvement in ozone levels seen at the monitors.

The emissions for both years were derived from periodic VOC and NO_X emission inventories, which are prepared every three years. Based on the estimated emissions, TCEQ has documented several emission trends to show that permanent and enforceable emission controls in various source sectors are responsible for significant downward trends in VOC and NO_X emission totals in the BPA area. For a discussion of emission inventory preparation methods, see the discussion of the preparation of the 2005 base year emission inventories below.

To demonstrate that VOC and NO_X emissions decreased between one of the violation years (2002) and an attainment year (2005), TCEQ has documented BPA's VOC and NO_X emissions for 2002 and 2005 for all anthropogenic source sectors. Table 5 lists these emissions for the 2002 PEI and 2005 EI. Due to improved reporting and estimating techniques, flash emissions are better captured in the 2005 inventory. To compare values that are alike, VOC area source emissions for 2005 in Table 5 do not include flash emissions from upstream oil and gas production.

TABLE 5—A COMPARISON OF VOC AND NO_X EMISSIONS IN THE BPA AREA BY SOURCE CATEGORY FROM THE 2002 PEI AND THE 2005 BASE EI

[Tons per average ozone season day]

Emissions source category	2002	2005
VOC Emissions (tpd)		
Area	50.11	*42.59
Non-Road Mobile	13.85	4.96
On-Road Mobile	13.32	11.63
Point	43.81	42.68
Total	121.09	101.86
NO_X Emissions (tpd)		
Area	7.54	9.06
Non-Road Mobile	48.99	25.99
On-Road Mobile	45.84	45.60
Point	109.23	68.49
Total	211.60	149.14

*This figure represents the 2005 base inventory for area sources used in the maintenance plan not including flash emissions from upstream oil and gas production.

This comparison of emissions in the BPA area shows that NO_X emissions significantly declined between 2002 and 2005. In addition, VOC emissions in the BPA area also declined between 2002 and 2005. TCEQ has included this information as part of its demonstration that emissions reductions in the BPA area, for both NO_X and VOC between 2002 and 2005, explain the observed improvement in ozone concentrations. Further, the reductions between 2002 and 2005 can be attributed to permanent and enforceable reductions.

The most significant reductions documented in Table 5 were the reductions in Point Source NO_X. In 2000, Texas adopted additional NO_X control rules to further reduce NO_X emissions from electric utility power boilers (approximately 50% reduction) and from industrial boilers and process heaters (approximately 20 percent reduction). These reductions occurred in two stages, with two-thirds of the reductions occurring by May 1, 2003, and the remaining one-third by May 1, 2005. Federal emission control measures for on and off road emissions also have had significant impacts on VOC and NO_X emissions in the BPA area.

Based on the 2002 and 2005 nonattainment area emissions information provided by TCEQ, EPA concludes that VOC and NO_X emission totals have significantly declined in the nonattainment area during the 2002–2005 period. These emission reductions have contributed to attainment of the 1997 eight-hour ozone standard in this area. EPA concurs with Texas' conclusions that the emission controls, emissions inventories, and emissions trends support the conclusion that attainment in the area is due to permanent and enforceable emission reductions.

To further demonstrate that permanent and enforceable emission controls have reduced VOC and NO_X emissions, TCEQ also documented the trends in NO_X and VOC concentrations

in the BPA area, which is discussed in greater detail below.

B. Impact of Emissions Controls Implementation: Trend Analysis

To assess the impact of emission control implementation, TCEQ determined the VOC and NO_X ambient concentration trends at two monitors in the BPA area from 1991 to 2007. This included determining or projecting the VOC emissions for all seventeen years in this time period. NO_X trends during this period, for both monitors provided by TCEQ in the analysis, Beaumont (CAMS 2) and West Orange (CAMS 9), showed that the 95th percentile of concentrations decreased at both monitors, and that the average NO_X concentration remained relatively flat at Beaumont (CAMS 2) but has decreased at West Orange (CAMS 9). For VOC trends in the BPA area, since TCEQ's VOC data was limited, TCEQ included data provided by the SETRPC that show that average concentrations for both ethylene and propylene have decreased in the BPA area. The reduction in emissions and the corresponding improvement in ozone air quality over the assessed period can be attributed to the implementation of a number of emission control measures identified in the first part of this section above.

C. Permanent and Enforceable Emissions Controls Implemented

The following is a discussion of the permanent and enforceable emission controls that have been implemented in the BPA area. In Texas' 8-hour ozone redesignation request, the State documented all of the emission control rules or programs that have impacted VOC or NO_X emissions during the period 1991–2007.

1. Reasonably Available Control Techniques

Texas notes that a number of VOC and NO_X RACT rules developed in prior years have continued to provide additional VOC and NO_X emission reductions during the more recent years. For VOC controls, with the exception of the source categories covered by the most recently published CTGs (see a discussion of the new CTG RACT source categories below), Texas has adopted and implemented VOC RACT rules for source categories covered by older (prior to 2006) CTGs and for major non-CTG sources in Hardin, Jefferson and Orange Counties. All VOC RACT rules are contained in Chapter 115 of volume 30 of the Texas Administrative Code (30 TAC 115), and all NO_X RACT rules are contained in Chapter 117 of volume 30 of the TAC (30 TAC 117). All of these VOC and NO_X RACT rules have been approved by the EPA as revisions of the Texas SIP.

2. ROP Plans and Attainment Demonstration Plan

TCEQ states that the BPA are has met all of the one-hour ozone SIP obligations, including implementation of the VOC and NO_X emission control programs and rules needed to comply with Texas' one-hour ozone attainment demonstration for the BPA area and implementation of all emission control measures contained in the various ROP plans applicable to Hardin, Jefferson and Orange Counties. EPA approved the 15% ROP Plan on February 10, 1998 (63 FR 6659). EPA approved the Post-1996 VOC and NO_X ROP Plan on February 22, 2006 (71 FR 8962). The Post-1996 ROP Plan provided 27 percent reductions.

3. NO_X Control Rules

TCEQ developed NO_X emission control rules for electric industrial boilers, industrial boilers and process heaters, gas turbines, rich-burn stationary gas-fired internal combustion engines, nitric acid plants, and adipic acid plants in compliance with the CAA. These rules were adopted in 1993. Emission reductions resulted from these rules beginning in 1999.

TCEQ also adopted VOC rules for batch process and industrial wastewater sources and NO_X rules for lean-burn engines. These rules were adopted in 1999, with emissions reductions resulting from these rules beginning in 2001.

In 2000, Texas adopted additional NO_X control rules to further reduce NO_X emissions from electric utility power boilers (approximately 50% reduction) and from industrial boilers and process heaters (approximately 20 percent reduction). These reductions occurred in two stages, with two-thirds of the reductions occurring by May 1, 2003, and the remaining one-third by May 1, 2005.

4. Federal Emission Control Measures

TCEQ notes that other Federal emission control measures have had significant impacts on VOC and NO_X emissions in the BPA area. These Federal measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Although some of the emission reductions occurred by the attainment years (2005–2007) in the BPA area, additional emission reductions will occur during the maintenance period. For example, note that the Tier 2 emission standards for passenger vehicles weighing over 8,500 pounds were not implemented until 2008 or later.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in 2000 (October 6, 2000, 65 FR 59895; Updated Emissions Standards for 2004 and Later Model Year Highway Heavy Duty Engines and Vehicles). This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007, which further reduced the highway diesel fuel sulfur content to 15 parts per million, leading to additional reductions in combustion NO_X and VOC emissions (January 18, 2001, 66 FR 5001; Heavy Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements). This rule is expected to achieve a 95 percent reduction in NO_X emissions from diesel trucks and busses.

Non-Road Diesel Rule. EPA issued this rule in 2004. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent. This rule is currently achieving emission reductions, but will not be fully implemented until 2010.

*Locomotives and Marine Compression-Ignition Engine*s. This EPA rule was issued March 14, 2008 and includes new emission standards for locomotives and marine diesel engines that will reduce NO_X emissions by about 80 percent compared with engines meeting the current standards. These new requirements have three parts: Tightening emission standards for existing locomotives and large marine engines when they are remanufactured, effective in 2008; establishing Tier III standards for new locomotives and marine diesel engines that were phased in beginning in 2009; and establishing more stringent Tier IV standards for new locomotives and marine diesel engines that will be phased in beginning in 2014.

Additional Federal programs. Additional federal programs for emissions reductions in the BPA area include Onboard Refueling Vapor Recover (ORVR) for light-duty vehicles, and Federal control through Maximum Achievable Control Technology (MACT) of Hazardous Air Pollutants emissions. Table 6 shows the federal emissions reductions programs in the BPA area for fuels and motor vehicles:

TABLE 6—BPA FEDERAL EMISSION REDUCTIONS PROGRAMS

Federal measures
○ Tier 2 Fuel and Vehicle Emission Standards.
○ Onboard Refueling Vapor Recovery (ORVR) for light-duty vehicles.
○ Heavy-Duty Engine and Vehicle and Fuel Standards.
○ Federal controls on certain nonroad engines.
○ Federal control through Maximum Achievable Control Technology (MACT) of Hazardous Air Pollutants emissions.
○ Volatile Organic Compound Emission Standards for Consumer Products.
○ Volatile Organic Compound Emission Standards for Architectural Coatings.
○ Locomotives and Marine Compression-Ignition Engines.

5. Additional State and Local Emission Reductions

Several local permanent and enforceable emission reductions have occurred through various mechanisms other than through RACT rules or through Federal emission control rules/programs. These State and Local measures, which are permanent and enforceable, include the following.

Texas Low Emission Diesel (TxLED) rule. Texas' TxLED rule reduces emissions of NO_X and other pollutants from diesel-powered motor vehicles and non-road equipment operating within 110 counties in the eastern half of Texas, including the BPA area. This rule was originally adopted by TCEQ in 2000 and revised in 2007, with compliance occurring over a range of years, beginning in 2005, and continuing through the beginning of 2008.

Texas Emission Reduction Plan (TERP). TERP, established in 2001, includes incentive grant programs to reduce NO_X emissions from internal combustion engines on mobile sources. Eligible grant projects include fleet expansions with cleaner engines, replacement of old vehicles and equipment, repower of old engines, and on-vehicle and on-site infrastructure for idle reduction, electrification, and deliver of alternative fuels. TCEQ explains in its submittal that, as of September 2007, the TERP program has awarded over $19 million for 58 projects in the BPA area, which are estimated to reduce NO_X emissions by more than 2.7 tons per day by 2009. In the BPA area, the projects funded thus far have resulted in NO_X reductions of 4,480 tons.

Agreed Orders. Although not relied upon by the State for showing attainment or RFP, Agreed Orders have also been important in reducing NO_X and VOC emissions in the BPA area. In December 2004, TCEQ adopted revisions to the BPA SIP to incorporate Agreed Orders in which six companies in the BPA area agreed to make enforceable measures that were not required. The six companies were ISP Elastomers; Mobil Chemical Company, a Division of Exxon Mobil Corporation; Huntsman Petrochemical Corp. of Port Arthur and also of Port Neches; Motiva Enterprises LLC; and Premcor Refining Group, Inc. The Agreed Orders included voluntary emissions reductions, air monitoring improvements, and other actions.

Table 7 shows the state and local emissions reductions programs in the BPA area.

TABLE 7—BPA STATE AND LOCAL EMISSION REDUCTIONS PROGRAMS

State and local measures
○ Texas Low Emission Diesel (TxLED).
○ Texas Emission Reduction Plan (TERP).
○ Prevention of Significant Deterioration.
○ Agreed Orders.

6. Controls To Remain In Effect

Texas commits to maintain all of the current emission control measures for VOC and NO_X after the BPA area is redesignated to attainment. Texas, through TCEQ's Chief Engineer's Office, Air Quality Division, and the Office of Compliance and Enforcement, has the legal authority and necessary resources to actively enforce against any violations of the State's air pollution emission control rules. After the BPA area is redesignated to attainment, TCEQ will implement NSR for major stationary sources and major modifications through the PSD program.

Summary.

As discussed above, local controls as well as national emission controls have contributed to the ozone air quality improvement in the BPA area. NO_X and VOC emissions have dropped substantially. Based on the above, EPA proposes to determine that Hardin, Jefferson, and Orange Counties and the State of Texas have met the requirement of section 107(d)(3)(E)(iii) of the CAA, and have demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions.

As noted above, Texas has committed to retaining all existing emission control measures that affect ozone levels in the BPA area after Hardin, Jefferson, and Orange Counties are redesignated to attainment of the 1997 eight-hour ozone NAAQS. All changes in existing rules subsequently determined to be necessary must be submitted to the EPA for approval as SIP revisions.

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

VIII. Does Texas have a fully approvable 1997 8-hour ozone maintenance plan pursuant to section 175A of the CAA for the BPA area?

A. What is required in an ozone maintenance plan?

In conjunction with its request to redesignate the BPA 1997 8-hour ozone nonattainment area, the State of Texas included a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS in the BPA area for at least 10 years after redesignation to attainment. Section 107(d)(3)(E)(iv). Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation to attainment of a NAAQS. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. The State must commit to submit a revised maintenance plan within eight years after the redesignation. This revised maintenance plan must provide for maintenance of the ozone standard for an additional 10 years beyond the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plans must contain contingency measures, with schedules of implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violation. The September 4, 1992, Calcagni memorandum provides additional guidance on the content of maintenance plans.

An ozone maintenance plan should, at minimum, address the following: (1) The attainment VOC and NO_X emission inventories; (2) a maintenance demonstration showing maintenance for the 10 years of the maintenance period;

(3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and, (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

B. How did Texas estimate the VOC and NO_X emissions for the attainment year and the projection years?

Sections 172(c)(3) and 182(b)(1) of the CAA require that the SIP include an inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emission inventory for an ozone nonattainment area contains VOC and NO_X emissions as these pollutants are precursors to ozone formation. TCEQ prepared a comprehensive emission inventory for the BPA area including point, area, on-road, and off-road mobile sources with the baseline year of 2005.

Texas developed its baseline 2005 Emissions Inventory by updating the 2002 Periodic Emissions Inventory (PEI) for NO_X and VOC in the BPA area. TCEQ initially submitted the 2002 PEI to EPA as part of the 2005 Dallas-Fort Worth 5% increment of progress SIP revision, but did not provide for public comment. Since then, Texas updated the inventory for area and nonroad emissions categories and provided the inventory for public comment. The emissions inventory for 2005 was included by Texas in its submittal to EPA on December 16, 2008, as part of its request to redesignate the BPA to attainment for the 1997 8-hour ozone NAAQS.

Texas' 2005 emissions inventory is listed in tables 2.5 and 2.6 of Texas' December 18, 2008, submittal, which is included in the docket for this action. The year 2005 was chosen by Texas as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be estimated for 2011, 2014, 2017, and 2021. The use of 2005 is an appropriate choice because it is one of the years in the period that the area has monitored attainment (2005–2007). The 2005 base year and projected year emissions for Hardin, Jefferson and Orange Counties were determined using the following procedures:

Area Source Emissions. Area source emissions for the base year 2005 were determined using Texas' 2005 periodic inventory as the starting point, and then specific inventory categories and emissions were reviewed and updated with current methodologies and local activity data when it was available. TCEQ compiled the 2005 area source emissions inventory from several sources of data, including work from various research contracts, TCEQ's research, and the EPA's National Emissions Inventory. Area source emissions for future years were projected using EPA's Economic Growth Analysis (EGAS) 5.0 or other growth factors, in accordance with EPA guidance. More information about calculations related to area source emissions is available in Chapter 4 and Appendix B of Texas' December 16, 2008 submittal, which is included in the docket.

Point Source Emissions. Point source VOC and NO_X emissions for the base year 2005 were compiled from Texas' annual emission database, which is called the "State of Texas Air Reporting System" (STARS). TCEQ projected point source emissions for future years by applying projection factors, where applicable, for EGU and non-EGU point sources, incorporating adjustments for three refineries, which were permitted to expand operations, as well as making adjustments for emissions credits. More information about calculations related to point sources is available in Chapter 4 and Appendix E of Texas' December 16, 2008 submittal which is included in the docket.

On-road Emissions. Mobile source emissions were calculated by a contractor to TCEQ, the Texas Transportation Institute (TTI), an objective transportation research entity within the Texas A&M University system, using EPA's MOBILE 6.2.03 emission factor model and traffic data taken from a travel-demand model for the three-county BPA area. TCEQ has provided detailed information to document the calculation of on-road mobile source VOC and NO_X emissions for 2005, as well as for the projection years of 2011, 2014, 2017, and 2021 (Chapter 4 and Appendices C and D of TCEQ's December 18, 2008 submittal.)

Non-road Emissions. For the majority of non-road types of equipments, TCEQ estimated emissions for the 2005 base year and 2011 using a model developed by TCEQ called TexN that utilizes EPA's NONROAD MODEL 2005 using county specific activity data. Since TexN could only provide projections to 2013, TCEQ developed non-road emissions projections for 2014, 2017, and 2021 using EPA's National Mobile Inventory Model (NMIM). For aircraft, locomotives, and commercial marine vessels, TCEQ estimated VOC and NO_X emissions using growth factors specific to those industries. More information about calculations related to non-road sources is available in Chapter 4 and Appendix B of Texas' December 16, 2008 submittal, which is included in the docket.

C. Has the State demonstrated maintenance of the ozone standard in the BPA area?

As part of its request to redesignate the BPA 8-hour ozone nonattainment area, the State of Texas included a SIP revision to incorporate a maintenance plan as required under section 175A of the CAA. The maintenance plan includes a demonstration based on a comparison of emissions in the attainment year (2005) and projected emissions to demonstrate maintenance of the 1997 8-hour ozone NAAQS in the BPA area for at least 10 years after the anticipated redesignation year [section 107(d)(3)(E)(iv)]. To demonstrate maintenance of the 1997 8-hour ozone standard, TCEQ projected VOC and NO_X emissions to 2021 and to several interim years, 2014, and 2017. These emissions were compared to the 2005 attainment year emissions to show that emissions of NO_X and VOC, when considered together, remain below the attainment levels for the entire demonstrated maintenance period.

In the December 18, 2008, ozone redesignation request, TCEQ graphically represented and compared the VOC and NO_X emissions for 2005, 2011, 2014, 2017 and 2021 for all major source sectors, and in total for the BPA nonattainment area. In its ozone maintenance demonstration, TCEQ presented the NO_X and VOC emission totals for the 2005 base year and all projection years for the BPA area without the impacts of CAIR.[3] TCEQ's maintenance demonstration shows that in 2011, 2014, 2017, and 2021 (without the impacts of CAIR rules), VOC and NO_X emission totals for the BPA area, when considered together, are projected to be below the 2005 VOC and NO_X emissions for the area.

NO_X emissions in the BPA area are projected to decline by 14 percent between 2005 and 2021. Note that the projected NO_X emission reduction for 2020 did not include NO_X emission reductions resulting from CAIR, but did include NO_X emission reductions resulting from Texas' existing NO_X emission control rules that are in the

[3] The U.S. Court of Appeals, for the District of Columbia Circuit has remanded CAIR without vacatur, directing EPA to revise the CAIR rule. This leaves the current version of the CAIR rule in question and raises questions about the future emission impacts of States' CAIR-based emission control rules. As a conservative approach to this problem, EPA requested that TCEQ remove the impacts of the State's CAIR NO_X emission control rules. TCEQ complied, and by the time of the December 18, 2008, submittal had removed all emissions impacts due to CAIR in its projections.

Texas SIP. VOC emissions in the BPA area are projected to increase by approximately 6 percent between 2005 and 2021. However, based on photochemical modeling analyses showing that the formation of ozone in the BPA area is more sensitive to NO_X than to VOC emissions, the increase in VOC emissions is expected to be fully offset by the decrease in NO_X. Specifically, photochemical modeling analyses show that for reducing the ozone design value in the BPA area, reducing NO_X emissions is 3.76 times as effective as reducing VOC emissions. This is discussed more fully below. Based on this analysis, emissions in the BPA area are expected to remain at levels consistent with attainment for the 1998 8-hour ozone standard from 2010 through 2021.

The December 23, 2008, remand of EPA's CAIR by the U.S. Court of Appeals led to both the State and EPA further considering the impact of this remand on Texas' ozone maintenance demonstration for the BPA area. The CAIR was remanded to EPA, and the process of developing a replacement rule is ongoing. The remand of CAIR does not alter the requirements of the NO_X SIP call. Although Texas is not subject to the NO_X SIP call, Texas, however, has demonstrated that the BPA area can maintain the 1997 eight-hour ozone standard without any additional NO_X emission reduction requirements. Regarding the impact of pollution from other States, all NO_X SIP Call states have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements remain applicable and are being met, and EPA will continue to enforce the requirements of the NO_X SIP Call even after any response to the CAIR Remand. As EPA has noted in other recent redesignation actions (e.g., Columbus Ohio, 74 FR 47404, 47405 (September 15, 2009)) "EPA believes that regardless of the status of the CAIR program, the NO_X SIP call requirements can be relied upon in demonstrating maintenance." Therefore, EPA believes that Texas' demonstration of maintenance under sections 175A and 107(d)(3)(E) of the CAA remains valid.

Texas has successfully demonstrated maintenance of the 1997 8-hour ozone standard between 2005 and 2021. In addition, VOC and NO_X emissions in the BPA area, when considered together with Texas' photochemical modeling analyses, are projected to decline between 2005 and 2021. Given the emissions growth and source control factors used to project emissions, EPA and Texas do not anticipate an increase in the overall combined VOC and NO_X emissions in the BPA area between 2010 and 2021.

The following table provides NO_X and VOC emissions data for the 2005 base year inventory, as well as projected NO_X and VOC emission inventory data for the years 2011, 2014, 2017, and 2021 for the BPA area. *Please see* Part II.B. of the TSD for additional emissions inventory data including projections by source category.

TABLE 8—BASE YEAR AND PROJECTED NO_X AND VOC EMISSIONS IN BPA, NO_X EMISSIONS (TPD)

[Without CAIR]

Source category	2005	2011	2014	2017	2021
Point	68.49	77.39	78.84	78.67	80.27
Area	9.06	9.95	10.40	10.86	11.47
Mobile	45.60	17.91	12.38	8.66	6.24
Nonroad	25.99	27.08	27.88	28.87	30.63
Total	149.14	132.33	129.50	127.06	128.61
VOC Emissions (TPD) [Without CAIR]					
Point	42.68	48.23	49.77	51.44	53.80
Area	151.57	155.77	157.06	158.63	160.77
Mobile*	11.63	7.92	6.51	5.58	4.77
Nonroad**	4.96	4.36	4.23	4.20	4.30
Total	210.84	216.28	217.57	219.85	223.64

* Calculated using MOBILE 6.2.03.
** Calculated using NONROAD 2005.

As shown in Table 8 above, total NO_X emissions are projected to decrease and total VOC emissions are projected to increase slightly for the area of the 10-year period of the maintenance plan. Emissions projections for future years in the area indicate a downward trend in NO_X emissions through 2021 as NO_X emissions are projected to decrease by 20.53 tpd, or approximately 14% (from 149.14 tpd to 128.61 tpd). VOC emissions projections through 2021 show a slight increase in projected emissions of 12.80 tpd by the year 2021, or approximately 6% (from 210.84 tpd to 223.64 tpd). This projected increase (6%) is relatively small considering that it occurs over a period of approximately sixteen years (as from the 2005 baseline). The slight upward trend in VOC emissions results from projected increases for the point and non-point (area) source emission categories. Emissions from non-road mobile and on-road mobile sources are projected to decrease.

As mentioned above, the projected 14% reduction (20.53 tpd) in NO_X emissions is expected to sufficiently offset the projected 6% increase (12.80 tpd) in VOC emissions, enabling the area to continue to maintain the 1997 ozone standard. Photochemical modeling analyses were submitted showing that reducing VOC emissions by 5.53 tpd results in an estimated design value reduction of 0.054 ppb. To reduce the ozone DV by 1 ppb, 102.4 tpd of VOC would need to be reduced. Reducing NO_X emissions by 7.80 tpd reduces the ozone DV by 0.287 ppb. This means that a reduction of 27.2 tpd of NO_X emissions would be required to reduce one ppb in the DV. Thus, NO_X emission reductions are expected to be 3.76 (102.4/27.2) times as effective in reducing the ozone DV as VOC emission reductions.

EPA proposes to conclude that TCEQ has demonstrated maintenance of the ozone standard during the 10-plus year maintenance period for the BPA area through projections of VOC and NO_X emissions that show that when

considered together the emissions will remain below the 2005 attainment levels during the maintenance period. This is demonstrated without the emission reductions from CAIR.

D. Monitoring Network

The State of Texas has committed in its maintenance plan for the BPA area to continue operation of an appropriate ozone monitoring network and to work with EPA in compliance with 40 CFR Part 58 with regard to the continued adequacy of the network, including whether additional monitoring is needed, and when monitoring can be discontinued.

There are five monitoring sites operated by the TCEQ in the BPA area, located in Jefferson and Orange Counties. TCEQ operates these monitors in accordance with the requirement of 40 CFR Part 58 and the EPA-approved Quality Assurance Program Plan.

There are four additional monitors operated by the South East Texas Regional Planning Commission (SETRPC). If the SETRPC, however, removes one of its monitors, the EPA and Texas will jointly review the adequacy of the network, including whether additional monitoring is needed. In the maintenance plan, Texas commits to continue operation of the five ozone monitors it operates in compliance with 40 CFR part 58 through the end of the maintenance period (2021). The State also commits to continue to operate a monitoring network in accordance with 40 CFR part 58 and to enter data into the Air Quality System in accordance with Federal guidelines. The TCEQ will continue to provide data from the SETRPC monitors on the Commission's Web site and in EPA's AQS database as long as the SETRPC participates in the network.

As identified in the maintenance plan, each of the nine monitoring sites in the BPA area monitored attainment with the 1997 8-hour ozone standard beginning in 2005. Data for each monitoring site was shown above and further discussed in Section V.A. Table 1. *See* the docket for a map of the BPA monitoring network, and the TSD: Part I.A. for additional monitoring information.

E. Verification of Continued Attainment

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

Texas will track the progress of the maintenance plan through continued ambient ozone monitoring in accordance with the requirements of 40 CFR Part 58, and by performing future reviews of actual emissions for the area using the latest emissions factors, models, and methodologies. (section 4.2 of TCEQ's BPA submittal, December 16, 2008). For these periodic updates of the BPA emissions inventories, Texas will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth and activity levels.

F. What is the maintenance plan's contingency plan?

The section 175(A) maintenance plan includes contingency provisions to promptly correct any violation of the 1997 ozone NAAQS that occurs after redesignation. The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures, as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. *See* section 175A(d) of the CAA.

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

The contingency measure trigger for the BPA maintenance plan is based upon monitoring. The triggering mechanism for activation of contingency measures is a monitored violation of the 1997 ozone standard. In this maintenance plan, if contingency measures are triggered, TCEQ has committed to adopt and implement the measures as expeditiously as practicable, but no longer than 18 months following the trigger. In order to accomplish this, in the submittal Texas commits to adopt within nine months (and implement within eighteen months) one or more contingency measures to re-attain the standard in the event of a violation of the 1997 8-hour ozone NAAQS in the BPA area. The measures to be considered include, but are not limited to the following control measures:

- Revision to 30 TAC Chapter 117 to control rich-burn, gas-fired, reciprocating internal combustion engines to meet NO_X emission specifications and other requirements to reduce NO_X emissions and ozone air pollution.
- Inclusion of one or more counties in the BPA area in 30 TAC Chapter 115 VOC rules for the control of crude and condensate storage tanks at upstream oil and gas exploration and productions sites or midstream pipeline breakout stations with uncontrolled flash emissions greater than 25 tpy.
- Inclusion of one or more counties in the BPA area in 30 TAC Chapter 115 VOC rules for more stringent controls for tank fittings on floating roof tanks, such as slotted guidepoles and other openings in internal and external floating roofs.
- Inclusion of one or more counties in the BPA area in 30 TAC Chapter 115 VOC rules limiting emissions from landings of floating roofs in floating roof tanks.
- Inclusion of one or more counties in the BPA area in 30 TAC Chapter 115 VOC rules for control of emissions from degassing operations for storage tanks with a nominal capacity of 75,000 gallons or more storing materials with a true vapor pressure greater than 2.6 pounds per square inch absolute (psia), or with a nominal capacity of 250,000 gallons or more storing materials with a true vapor pressure of 0.5 psia or greater. Degassing vapors from storage vessels, transport vessels, and marine vessels would be required to vent to a control device until the VOC concentration of the vapors is reduced to less than 34,000 parts per million by volume as methane.
- Inclusion of one or more counties in the BPA area in 30 TAC Chapter 114 rule for TxLED compliant marine diesel.

In addition, the maintenance plan states that the BPA area may also be expected to voluntarily implement some additional local control measures.

These contingency measures and schedules for implementation satisfy EPA's longstanding guidance on the requirement of section 175(A) for continued attainment. Continued attainment in the Beaumont Port Arthur area will depend, in part, on the air quality measures discussed previously (*see* VI.B. and V.B.4. above). The State will continue to operate appropriate

ambient ozone monitoring sites in the BPA area to verify continued attainment of the 1997 ozone NAAQS. The air monitoring results will reveal changes in the ambient air quality as well as assist the State in determining which contingency measures will be most effective if necessary.

As required by section 175A(b) of the CAA, Texas commits to submit to the EPA an updated ozone maintenance plan eight years after redesignation of the BPA area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A(d) of the CAA, Texas has also committed to retain VOC and NO_X control measures contained in the SIP prior to redesignation.

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

IX. What is EPA's evaluation of the BPA area's motor vehicle emissions budget?

A. What are the transportation requirements for approvable MVEBs?

A maintenance plan must include a MVEB for transportation conformity purposes. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. It is a process required by section 176(c) of the Act for ensuring that the effects of emissions from all on-road sources are consistent with attainment or maintenance of the standard. EPA's transportation conformity rules at 40 CFR part 93 require that transportation plans, and programs, result in emissions that do not exceed the MVEB established in the SIP. The maintenance plan established an MVEB for 2021, which is the last year of the maintenance plan.

The MVEB is the level of total allowable on-road emissions established by the maintenance plan. Maintenance plans must include the estimates of motor vehicle VOC and NO_X emissions that are consistent with maintenance of attainment, which then act as a budget or ceiling for the purpose of determining whether transportation plans, and programs conform to the maintenance plan. In this case, the MVEB sets the maximum level of on-road transportation emissions that can be produced, when considered with emissions from all other sources, which demonstrates continued maintenance of attainment of the 1997 8-hour ozone NAAQS.

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

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

EPA's substantive criteria for determining "adequacy" of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining the adequacy of an MVEB was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; transportation conformity rule amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for MVEBs is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Texas' maintenance plan submission includes NO_X and VOC budgets for the year 2021. EPA reviewed the budgets through the adequacy process. The availability of the SIP submission with this 2021 MVEB was announced for public comment on EPA's adequacy Web page on April 15, 2009, at: *http://www.epa.gov/otaq/transp/conform/adequacy.htm.* The EPA public comment period on the adequacy of the 2021 MVEB for BPA closed on May 15, 2009. EPA did not receive any adverse comments on the MVEB. On April 1, 2010, EPA made a finding of adequacy for the 2021 MVEB included in this 8-hour ozone maintenance plan (75 FR 16456).

C. Is the MVEB approvable?

Table 9 shows the total projected transportation emissions for 2021, as submitted by Texas.

TABLE 9—BEAUMONT/PORT ARTHUR PROJECTED TRANSPORTATION EMISSIONS

[Tons per avg. ozone season day]

Pollutant	2005	2011	2014	2017	2021
NO_X	45.60	17.91	12.38	8.66	6.24
VOC	11.63	7.92	6.51	5.58	4.77

These transportation emissions are also represented in Table 8 of this notice as the "mobile" emissions portion of emission inventory data for the BPA area. As shown in Tables 8 and 9, substantial reductions in both NO_X and VOC transportation emissions are projected between 2005 and 2021. Further, as previously stated in this action, EPA finds that the State has demonstrated the future combined emissions levels of NO_X and VOC in 2011, 2014, 2017, and 2021 are expected to be similar to or less than the emissions levels in 2005. The projected transportation emissions for 2021 were used by Texas as the basis of the 2021 NO_X and VOC MVEB for the BPA area. These emissions are consistent with the maintenance plan demonstrating continued compliance with the 1997 ozone NAAQS for the 10-year period following redesignation to attainment.

Under 40 CFR 93.101, the term safety margin is the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance. The attainment level of emissions is the level of emissions

during one of the years in which the area met the NAAQS. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. Emission projections contained in the BPA maintenance plan show the 2021 inventory in the BPA area represents a 20.53 tpd decrease in NO_X emissions compared with 2005 (Table 4–2), while VOC emissions increase by 12.80 tpd (Table 4–1). Conservatively assuming a 1:1 ratio of NO_X/VOC emissions in the formation of O_3, the net total reduction in NO_X emissions is 7.73 tpd (Table 4–3). Texas has allocated one tpd of the NO_X emission reduction as a safety margin, which increases the 2021 MVEB for NO_X emissions from 6.24 tpd to 7.24 tpd. This is discussed in greater detail in Part II.D. of the TSD. EPA finds this to be an acceptable allocation.

The submitted NO_X and VOC MVEB for the BPA area is defined in Table 10 below.

TABLE 10—BEAUMONT/PORT ARTHUR NO_X AND VOC MVEB

[Summer season tons per day]

Pollutant	2021
NO_X	*7.24
VOC	4.77

*Includes an allocation of 1 tpd from the available NO_X safety margin.

Through this rulemaking, EPA is proposing to approve Texas' 2021 MVEB for VOCs and NO_X for the BPA area for transportation conformity purposes, because EPA has determined that the area maintains the 1997 8-hour ozone standard with the emissions at the levels of the budget. The submittal has met the adequacy criteria in 40 CFR 93.118(e)(4), and EPA has completed a comprehensive review of the maintenance plan, concluding that the overall plan demonstrates maintenance, is approvable and the budgets are consistent with the overall plan. Therefore, the budgets can be proposed for approval.

X. EPA's Evaluation of the Backfill Contingency Measures for the 1-Hour Ozone Failure-To-Attain Contingency Measures and the State's Request To Remove an Unimplemented VOC Rule From the Texas SIP

EPA approved the 1-hour ozone failure-to-attain section 172(c)(9) and 182(c)(9) contingency measures for the BPA area on February 10, 1998 at 63 FR 6659 as part of EPA's approval of the BPA area's 15% VOC ROP Plan. These contingency measures included the Federal Tier I rules, the Federal small engine VOC rule, and excess reductions from the 15% VOC ROP Plan. When EPA reclassified the BPA area to serious for the 1-hour ozone NAAQS, these are the contingency measures that EPA triggered. EPA approved a marine vessel-loading rule as part of the Texas SIP for the BPA area on January 26, 1999 (64 FR 3841). As written, it appears it is triggered upon an EPA finding of failure to attain, but it was not included in the SIP-approved contingency plan for the BPA area. EPA never approved it specifically as a section 172(c)(9) contingency measure nor did EPA approve it as a replacement for the 1998-approved contingency measures. In the **Federal Register** action for reclassification of the BPA area for the 1997 8-hour ozone standard to moderate, EPA refers specifically to the 1998-approved 1-hour contingency measures as the ones EPA triggered to be implemented for failure to attain (73 FR 14391, March 18, 2008). Also in the reclassification **Federal Register** action, EPA required the State to submit additional contingency measures to replace, i.e., backfill, the triggered contingency measures for its new serious area attainment deadline under section 182(c)(9). The State submitted two control measures on October 15, 2005, as a SIP revision to replace or backfill the triggered contingency measures as required by the reclassification notice. The proposed 1-hour section 182(c)(9) contingency measures are emissions reductions from:

(1) NO_X and VOC reductions from three companies in the BPA area through Agreed Orders, and (2) NO_X reductions from the Texas Emissions Reductions Program (TERP) projects.

EPA approved the Agreed Orders into the SIP on April 12, 2005 (70 FR 18995). The TERP program was approved as part of the Texas SIP on August 19, 2005 at 70 FR 48647 including the methodology for calculating SIP credits for the individual TERP control measures. TERP provides funding to offset the incremental costs of projects associated with reducing NO_X emissions from high-emitting internal combustion engines.

Together, reductions from these two control measures meet the 3 percent requirement for the 1-hour backfill failure-to-attain contingency measures. The NO_X reductions from the Agreed Orders and the TERP projects were not relied upon for ROP or attainment demonstration purposes and have already been implemented. *Please see* the TSD: Part II.E. for additional detail. EPA is proposing to approve the substitute control measures for the backfill failure-to-attain contingency measures. Although, as noted in the discussion above, the 1-hour anti-backsliding contingency measure obligation is suspended upon a final determination that the area is attaining the 1-hour ozone standard, and terminates upon a final redesignation of the area for the 8-hour ozone standard, EPA understands that TCEQ nonetheless wishes EPA to take action upon the submitted backfill measures. EPA notes that, after the area is redesignated to attainment for the 8-hour ozone NAAQS, these 1-hour contingency measures are replaced by the section 175A Maintenance Plan contingency measures.

Also, in this SIP revision, TCEQ submitted a request to remove from the Texas SIP, the "contingency" measure marine vessel loading rule (30 TAC § 115.219). This Texas marine vessel rule was approved into the Texas SIP but was never implemented by the State. As discussed above, this measure was not relied upon as part of a 172(c)(9) or 182(c)(9) contingency plans and was not triggered by the EPA as part of the reclassification notice.

Texas, in its SIP revision, made clear that the marine vessel loading rule should not be a part of the backfill failure to attain contingency plan required by the reclassification and that the two measures used to comprise this plan were an appropriate substitute for the marine vessel loading rule. In fact, Texas' sensitivity tests in photochemical modeling runs indicate that reductions of 1 tpd of NO_X are equivalent to reductions of 3.8 tpd of VOC in reducing ozone in the BPA area (TCEQ Attainment Demonstration SIP, received October 18, 2005, section 5.3.1, p. 5–4). The two backfill contingency measures are mostly NO_X reductions and would be expected to be more effective than the Marine Vessel Loading Rule, a VOC control in reducing ozone.

The SIP marine-vessel loading rule was never relied upon for demonstrating attainment, achieving reasonable further progress, or as a reasonable available control measure. It was not relied upon in the 15% VOC ROP plan or the post-1996 ROP plan. It was not relied upon in any of the submitted attainment demonstration SIPs. It also is not required to meet VOC RACT. EPA notes that since adoption by TCEQ, federal rules for marine vessel loading have been adopted and achieve much of the reductions that would have been achieved if the State rule had been triggered.

EPA has evaluated Texas' request to remove the marine vessel-loading rule from its SIP. For the reasons cited above, whereas the Texas rule was never

implemented or triggered as a contingency measure and whereas the rule is not needed to satisfy any other statutory requirements, EPA proposes that the Texas marine vessel-loading rule be removed from the Texas SIP.

XI. Proposed Actions

EPA is proposing several related actions under the Act for the BPA ozone nonattainment area, consisting of Hardin, Jefferson, and Orange counties. Consistent with the Act, EPA is proposing to determine that the BPA area has attained the 1997 8-hour ozone NAAQS and to approve a request from the state of Texas to redesignate the BPA area to attainment of the 1997 8-hour ozone standard. This determination is based on complete, quality-assured, and certified ambient air quality monitoring data for the 2005–2007 ozone seasons and 2006–2008 ozone seasons, as well as data for 2009 in AQS but not yet certified, that demonstrate that the 1997 8-hour ozone NAAQS has been attained in the area. EPA is also proposing to make a determination that the BPA area is meeting the 1-hour ozone standard. This determination is based on complete, quality-assured, and certified ambient air quality monitoring data for 2005–2007 ozone seasons and 2006–2008 ozone seasons, as well as data for 2009 in AQS but not yet certified, that demonstrate that the 1-hour ozone NAAQS has been attained in the area. Finalizing the 1-hour ozone attainment determination proposal will suspend the 1-hour anti-backsliding requirements for a 1-hour attainment demonstration and RACM analysis and contingency measures. These requirements will cease to apply if the area is redesignated to attainment for the 1997 8-hour ozone standard.

EPA is proposing to approve the 2002 base year emissions inventory. We are proposing to approve the State's CFV program equivalency demonstration. We are proposing to find that the BPA area, upon final approval of this emissions inventory and the CFV program equivalency determination, will meet all the applicable CAA requirements under section 110 and Part D for purposes of redesignation for the 1997 8-hour ozone NAAQS including all the applicable antibacksliding CAA requirements for a serious 1-hour ozone nonattainment area. Further, EPA is proposing to approve into the SIP, as meeting section 175A and 107(d)(3)(E)(iv) of the Act, Texas' maintenance plan for the BPA area for the 1997 8-hour ozone NAAQS. The maintenance plan shows maintenance of the standard through 2021. Additionally, EPA is proposing to approve the 2021 MVEB for NO_X and VOC submitted by Texas for the BPA area in conjunction with its redesignation request and maintenance plan.

Consequently, EPA is proposing to approve the State's request to redesignate the area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. After evaluating Texas' redesignation request, EPA has determined that upon final approval of the above-identified SIP elements and the maintenance plan, the area will meet the redesignation criteria set forth in section 107(d)(3)(E) and section 175A of the Act. The final approval of this redesignation request would change the official designation in 40 CFR part 81 for the BPA area from nonattainment to attainment for the 1997 8-hour ozone standard. EPA also notes that if EPA's proposed determinations of attainment for the 1-hour and 8-hour ozone NAAQS are finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement, the RFP and attainment demonstration requirements, and the requirement for contingency measures) are suspended as long as it continues to attain the NAAQS, and would cease to apply upon final redesignation.

EPA also is proposing to approve the Post-1996 ROP Plan's contingency measures and backfill failure-to-attain contingency measures, and the removal from the Texas SIP under section 110(l) of a VOC marine vessel loading contingency measure.

XII. Statutory and Executive Order Reviews

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

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not 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);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

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