

also proposed that the appropriate reclassification of the area was to severe.

In that proposed action, we also stated that Louisiana was seeking an extension of its attainment date pursuant to the extension policy, which was published in a March 25, 1999, **Federal Register** notice (64 FR 14441). This policy addressed areas affected by downwind transport of ozone and/or ozone precursors. EPA proposed to take final action on the determination of nonattainment and reclassification of the Baton Rouge area only after the area had received an opportunity to qualify for an attainment date extension under the extension policy. EPA received comments on the May 9, 2001, proposed rule (66 FR 23646). We also received comments from the public on the supplemental proposed rulemaking published on July 25, 2001 (66 FR 38608) for the "Clean Air Reclassification and Notice of Potential Eligibility for Extension of Attainment Date, Louisiana; Baton Rouge Ozone Nonattainment Area." This notice supplemented the proposed actions of the May 9, 2001, notice, by proposing to extend the deadline for submission of an attainment plan from August 31, 2001, to December 31, 2001. Louisiana submitted an Attainment Plan/Transport SIP on December 31, 2001 for the Baton Rouge area.

On March 7, 2002, the United States District Court for the Middle District of Louisiana entered a judgment ordering EPA to issue a determination by June 5, 2002, as to whether the Baton Rouge area had attained the applicable ozone standard under the CAA. *LEAN v. Whitman*, No. 00-879-A.

EPA made the determination required by the Court, and as the Court further ordered, EPA then published a notice of this determination in the **Federal Register**. 67 FR 42687 (June 24, 2002).

That notice stated EPA's finding that the Baton Rouge area did not attain the 1-hour ozone NAAQS by November 15, 1999, and that the area would be reclassified to "severe" by operation of law as of the effective date of the rule. In addition, the June 24, 2002, rulemaking established the dates by which Louisiana was to submit SIP revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas and to attain the 1-hour NAAQS for ozone. The June 24, 2002, rulemaking was to be effective August 23, 2002. EPA's responses to the comments related to the reclassification are incorporated by reference in this rule and appear in the June 24, 2002, rule.

On August 20, 2002, EPA published a rule extending the effective date of the June 24, 2002, rulemaking to October 4, 2002 (67 FR 53882).

On October 2, 2002, EPA issued a final rule in which EPA extended the attainment date for the Baton Rouge area, consistent with the extension policy, and withdrew the June 24, 2002, rulemaking before its effective date (67 FR 61786). The October 2, 2002, rulemaking also approved the attainment demonstration for the Baton Rouge area and took several other related actions.

Petitions for review of the October 2, 2002, rulemaking have been filed in the U.S. Court of Appeals for the Fifth Circuit (*Louisiana Environmental Action Network (LEAN) v. EPA*, No. 02-60991; *Pointe Coupee Parish Police Jury v. EPA*, No. 02-61021).

Additionally on December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit issued its decision in *Sierra Club v. United States EPA*, 314 F.3d 735. Among the issues in that case was EPA's decision under the extension policy to extend the 1-hour ozone attainment

deadline for the Beaumont-Port Arthur, Texas, area without reclassifying the area. The Court rejected this decision because it determined that the CAA precludes such an extension as a matter of law. Because the Court's decision was based on its legal interpretation of the CAA and not on the particular facts at issue in the Beaumont-Port Arthur case, and because the decision is precedential within the Circuit, we must withdraw our determination to extend the attainment deadline for Baton Rouge. Accordingly, we requested that the Fifth Circuit grant a partial voluntary remand of our October 2, 2002, final rule, to allow us to withdraw our decision to extend the attainment date for Baton Rouge. The Court granted that request on February 25, 2003. We are issuing this rule in response to the Fifth Circuit Court of Appeals rejection of EPA's use of the extension policy.

II. What Are the National Ambient Air Quality Standards?

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

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms which are referred to as the 1-hour and 8-hour¹ standards. Table 1 summarizes the 1-hour ozone standard.

TABLE 1.—SUMMARY OF OZONE STANDARD

Standard	Value	Type ^a	Method of compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.

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

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

hour ozone standard that is addressed in this document.

IV. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and

control strategies to ensure that state air quality meets the NAAQS established by EPA. After engaging in required public participation, each state must submit the required regulations and control strategies to us for approval and

¹ The 8-hour ozone standard value is 0.08 ppm and is the primary and secondary standard. The method of compliance is the average of the annual

fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over

any three-year period is less than or equal to 0.08 ppm.