

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[LA-62-1-7561; FRL-7249-6]

**Approval and Promulgation of Implementation Plans; Louisiana; Control of Emissions of Nitrogen Oxides in the Baton Rouge Ozone Nonattainment Area****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing approval of rules into the Louisiana State Implementation Plan (SIP). In this rulemaking we are proposing to approve revisions to the Louisiana Nitrogen Oxides (NO<sub>x</sub>) rules in the Baton Rouge (BR) 1-hour ozone nonattainment area (BR area) and its Region of Influence as submitted to us by the State on February 27, 2002 (the February 27, 2002, SIP revision). The revisions concern Reasonably Available Control Technology (RACT) for point sources of NO<sub>x</sub> in the BR area and its Region of Influence. See section 1 of this document for additional information. These new emissions limits for point sources of NO<sub>x</sub> will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the BR area.

The EPA is proposing approval of SIP revisions to regulate emissions of NO<sub>x</sub> as meeting the requirements of the Federal Clean Air Act (the Act).

**DATES:** Comments must be received on or before August 22, 2002.

**ADDRESSES:** Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Copies of the Technical Support Document (TSD) and other documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana, 70810.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Shar, Air Planning Section (6PD-

L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214)665-6691, and *Shar.Alan@epa.gov*.

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- Throughout this document "we," "us," and "our" means EPA.

**1. What actions are we taking in this document?**

On February 27, 2002, the Governor of Louisiana, submitted rule revisions to LAC 33:III, Chapter 22, "Control of Emissions of Nitrogen Oxides," (AQ215), as a revision to the Louisiana SIP for point sources of NO<sub>x</sub> in the BR area and its Region of Influence.

The BR area constitutes the 5 ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. The Region of Influence constitutes the 4 ozone attainment parishes of East Feliciana, Pointe Coupee, St. Helena, and West Feliciana. See section 2201(A)(1) of Louisiana's rule revisions. This SIP revision concerns RACT for point sources of NO<sub>x</sub> in all these 9 parishes. The State of Louisiana submitted this revision to us as a part of the NO<sub>x</sub> reductions needed for the BR area to attain the 1-hour ozone standard. These NO<sub>x</sub> reductions will assist the BR area to attain the 1-hour ozone standard.

We received the Louisiana rule that we are considering in this proposed action on February 27, 2002, as a component of the an Attainment Plan and Transport Demonstration (hereinafter, the Attainment Plan/

Transport SIP) for the BR area submitted by the LDEQ. This revision to the Attainment Plan/Transport SIP specifies emission reduction strategies designed to bring the BR area into compliance with the ozone NAAQS. One component of the Attainment Plan/Transport SIP is the revised NO<sub>x</sub> RACT rule that has been enacted at Louisiana Administrative Code (LAC) 33:III, Chapter 22. This action is necessary to determine whether that revised rule is an approvable component of the Attainment Plan/Transport SIP.

In this document we are proposing to approve the February 27, 2002, rule revision to LAC 33:III, Chapter 22, of the Louisiana SIP. Sections 8 through 11 and section 15 of this document contain more information about LAC 33:III, Chapter 22. By this approval, we are also agreeing that the State of Louisiana will be implementing RACT for point sources of NO<sub>x</sub> in the BR area and its Region of Influence. See the NO<sub>x</sub> point source categories listed in Table III, section 10 of this document for more information.

Table I contains a summary list of the sections of LAC 33:III, Chapter 22, as submitted to us on February 27, 2002, for sources of NO<sub>x</sub> in these 9 parishes.

**TALBE I.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF LAC 33:III, CHAPTER 22 SUBMITTED ON FEBRUARY 27, 2002, SIP REVISION**

Section	Description
A .....	Applicability
B .....	Definitions
C .....	Exemptions
D .....	Emission Factors
E .....	Alternative Plans
F .....	Permits
G .....	Initial Demonstration of Compliance
H .....	Continuous Demonstration of Compliance
I .....	Notification, Record-keeping, and Reporting Requirements
J .....	Effective Dates

**2. What Action Are We Not Taking in This Document?**

We are not acting on the BR area attainment plan in this particular action or on any other area attainment plan.

**3. What Are NO<sub>x</sub>?**

Nitrogen oxides belong to the group of criteria air pollutants. The NO<sub>x</sub> are produced from burning fuels, including natural gas, gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

#### 4. What Is RACT?

RACT is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. Sections 182(b)(2) and 182(f) of the Act establish this requirement. These sections, taken together, establish the requirements for Louisiana to submit a NO<sub>x</sub> RACT regulation for all major stationary sources of NO<sub>x</sub> in ozone nonattainment areas classified as moderate and above. A State may choose to develop its own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source.

#### 5. What Are the Clean Air Act's RACT Requirements for NO<sub>x</sub> Emissions?

The BR area was classified as a serious ozone nonattainment area (40 CFR 81.319). You can find the requirements for serious ozone nonattainment areas such as BR in section 182(c) of the Act. Section 182(c)(2)(C) addresses the NO<sub>x</sub> Control requirements for serious areas. Section 182(b)(2) requires States, with areas classified as moderate and above ozone nonattainment, to implement RACT with respect to all major sources of VOCs. Section 182(f) states that, "The plan provisions required under this subpart for major stationary sources of VOCs shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen." This NO<sub>x</sub> RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications.

On November 25, 1992 (57 FR 55620), we published a document of proposed rulemaking entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement). The NO<sub>x</sub> Supplement describes and provides preliminary guidance on the requirements of section 182(f) of the Act. You should refer to the NO<sub>x</sub> supplement for further information on the NO<sub>x</sub> requirements. Other EPA guidance memoranda, such as those included in the "NO<sub>x</sub> Policy Document for the Clean Air Act of 1990," (EPA-452/R96-005, March 1996), could provide you with more information about NO<sub>x</sub> requirements. In addition, states can use information in EPA's guidance documents known as the Alternative Control Techniques (ACTs)

to develop their RACT regulations. The following table contains list of ACT documents for various source categories of NO<sub>x</sub> with their corresponding EPA publication numbers.

TABLE II.—ACT DOCUMENTS FOR SOURCE CATEGORIES OF NO<sub>x</sub> AND THEIR EPA PUBLICATION NUMBERS

Source category	EPA publication No.
Gas turbines .....	EPA-453/R-93-007
Process heaters ...	EPA-453/R-93-034
Internal combustion engines.	EPA-453/R-93-032
Non-utility boilers	EPA-453/R-94-022
Utility boilers .....	EPA-453/R-94-023

#### 6. What Is Definition of a Major Source for NO<sub>x</sub>?

As stated in section 5 of this document, the BR area is currently a serious ozone nonattainment area. According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO<sub>x</sub>. Therefore, the major source size for NO<sub>x</sub> within these 9 parishes is 50 tpy or more, when uncontrolled.

#### 7. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time.

*See* section 1 of this document for a listing of the Louisiana parishes that are nonattainment for ozone.

#### 8. What Is History of NO<sub>x</sub> RACT Rule for Point Sources in the BR Area?

Prior to this proposed rulemaking the Louisiana's approved SIP did not contain NO<sub>x</sub> RACT rule for point sources operating in these 9 parishes. On January 26, 1996 (61 FR 2438), we granted an exemption under section 182(f) of the Act from the RACT requirements for major stationary sources of NO<sub>x</sub> operating in the BR ozone nonattainment area. We based our approval of the exemption on modeling which showed that NO<sub>x</sub> controls would not contribute to attainment of the NAAQS for ozone. In granting the exemption, EPA reserved the right to reverse the approval of the exemption, if subsequent modeling data demonstrated an ozone attainment

benefit from NO<sub>x</sub> emission controls. Photochemical grid modeling recently conducted for the BR area SIP indicates that control of NO<sub>x</sub> sources will help the area attain the NAAQS for ozone. The State of Louisiana has requested that EPA rescind the NO<sub>x</sub> exemption based on this new modeling. Accordingly, on May 7, 2002 (67 FR 30638), we published our proposal to rescind, among other things, the 182(f) NO<sub>x</sub> exemption. When finalized, the State will need to implement RACT requirements for major stationary sources of NO<sub>x</sub> operating in these 9 parishes.

We believe that rescission of the 182(f) NO<sub>x</sub> exemption, and implementation of RACT rules for major stationary sources of NO<sub>x</sub> operating in these 9 parishes will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

#### 9. What Does the February 27, 2002, SIP Revision for point sources of NO<sub>x</sub> in the BR Area Say?

The State's rulemaking will reduce/control NO<sub>x</sub> emissions from point sources in these 9 parishes. *See* section 1 of this document for a listing of these 9 parishes. The rulemaking affects point sources that emit, when uncontrolled, 50 tpy or more of NO<sub>x</sub>. The revised State rule offers facility-wide averaging incentive and operational flexibility to a source to operate at RACT or more stringent levels beyond the designated ozone season (May 1 through September 30). The May 1 through September 30 time frame is consistent with the time frame adopted for the ozone transport assessment group rules. *See* 62 FR 60344 published on November 7, 1997. The NO<sub>x</sub> emission control methods may vary from one source to another. Due to the fact that NO<sub>x</sub> emission control methods differ from one source to another, some sources will need to operate their NO<sub>x</sub> control device beyond the above-mentioned ozone season. The State provided us with more information about the seasonality of the NO<sub>x</sub> control in Chapter 22, in a letter dated May 3, 2002. The seasonality of Louisiana's NO<sub>x</sub> controls will also impact Louisiana's ERC accounting procedures. The ERC generated from implementation of this rule will have to be permanent, actual, surplus, quantifiable, and federally enforceable at the time of use. Section D(3) of the rule contains the equation used for calculating the appropriate NO<sub>x</sub> cap for a source or multiple sources under common control. *See* page 4 of our TSD for additional information. Furthermore, the State will

need to base and conduct its ERC accounting on a two-balance (during ozone season and outside ozone season) system for NO<sub>x</sub> ERC. The NO<sub>x</sub> ERC generated outside the ozone season can only be made available for use outside the ozone season. The NO<sub>x</sub> ERC generated during the ozone season can be made available for use in both the ozone season and outside the ozone season. We will be proposing action on

Louisiana's ERC accounting in a separate **Federal Register** document. For additional information you can refer to our TSD that contains a copy of the State's May 3, 2002, letter.

We believe that the proposed rulemaking will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

#### 10. What Are the NO<sub>x</sub> Emissions Factors in the February 27, 2002, SIP Revision for Point Sources of NO<sub>x</sub> in the BR Area?

Table III of this document contains a summary of the affected NO<sub>x</sub> point source categories, maximum rated capacities, and their relevant emission factors based on the February 27, 2002, SIP submittal. See LAC 33:III:2201, section D(1).

TABLE III.—AFFECTED CATEGORIES OF NO<sub>x</sub>, MAXIMUM RATED CAPACITIES, AND EMISSION FACTORS IN THE BR AREA

Category	Maximum rated capacity	NO <sub>x</sub> emission factor
Electric Power Generating System Boilers:		
Coal-fired .....	≥80 MMBtu/hour .....	0.21 lb/MMBtu
Number 6 Fuel Oil-fired .....	≥80 MMBtu/hour .....	0.18 lb/MMBtu
All others (gaseous or liquid) .....	≥80 MMBtu/hour .....	0.10 lb/MMBtu
Industrial Boilers .....	≥80 MMBtu/hour .....	0.10 lb/MMBtu
Process heater/furnaces:		
Ammonia Reformers .....	≥80 MMBtu/hour .....	0.23 lb/MMBtu
All others .....	≥80 MMBtu/hour .....	0.08 lb/MMBtu
Stationary gas turbines .....	≥10 MW .....	0.16 lb/MMBtu or 42 ppm @ 15 percent O <sub>2</sub> , dry basis)
Stationary internal combustion engines:		
Lean burn .....	≥1500 Hp .....	4 g/Hp-hour
Rich burn .....	≥300 Hp .....	2 g/Hp-hour

We believe that the proposed NO<sub>x</sub> emission factors for point sources of NO<sub>x</sub> in the BR area will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP. By this approval we are agreeing that the State of Louisiana will be implementing RACT for point source categories listed in Table III, section 10 of this document.

Additionally, we will be proposing approval of a revision to Louisiana's lean burn engine requirements for NO<sub>x</sub>, through our "parallel processing" procedures explained at 40 CFR part 51, appendix V, in a separate **Federal Register** document.

#### 11. What Is the Compliance Schedule in the February 27, 2002, SIP revision for Point Sources of NO<sub>x</sub> in the BR Area?

The proposed compliance date for point sources of NO<sub>x</sub> in the BR area is as expeditiously as possible, but no later than May 1, 2005. See LAC 33:III:2201, sections J(1) and (2). We believe that the proposed compliance schedule for point sources of NO<sub>x</sub> in the BR area will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

#### 12. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air

quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### 13. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then

decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the CFR at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

#### 14. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

#### 15. What Areas in Louisiana Will the Proposed February 27, 2002, SIP Revision for Point Sources of NO<sub>x</sub> Affect?

The following table contains a list of Parishes affected by the proposed SIP

revision that we are proposing to approve, today.

TABLE IV.—RULE NUMBER AND AFFECTED PARISHES OF LOUISIANA

Rule No.	Affected parishes
LAC 33:III:2201 (AQ215) provisions .....	Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana.

If you are in one of these Louisiana parishes, you should refer to the Louisiana NO<sub>x</sub> rules to determine if and how today's action will affect you.

#### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

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

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

Dated: July 15, 2002.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

[FR Doc. 02-18576 Filed 7-22-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[MN 67-01-7292(b); FRL-7249-1]

### Approval of Section 112(l) Program of Delegation; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** In this document the EPA is proposing to approve a request from Minnesota for a partial delegation of the Federal air toxics program pursuant to section 112(l) of the Clean Air Act (Act). The State's mechanism of delegation involves the straight delegation of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards, except standards addressed specifically in this action, will occur through a Memorandum of Agreement (MOA) between the Minnesota Pollution Control Agency (MPCA) and EPA. This request for approval of a mechanism of delegation encompasses only those sources subject to a section 112 standard and a requirement to obtain a part 70 operating permit.

In the final rules section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment. Should the Agency receive such comment, it will publish a document informing the public that the direct final rule will not take effect and such public comment(s) received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second