appropriate circuit by November 26, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and will not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 11, 2002.

A. Stanley Meiburg,

Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart L—Georgia

2. Section 52.570(e), is amended by revising entry 12 in the table-EPA Approved Georgia Non-Regulatory Provisions to read as follows:

§ 52.570 Identification of plan.

* * * * *

EPA APPROVED GEORGIA NON-REGULATORY PROVISION

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
* * * *	*	*	*
12. Georgia Interagency Transportation Conformity Memorandum of Agreement, except for the following sections: Section 103(4)(d); Section 105(e); Section 106(c); Section 110(c)(1)(ii); Section 110(c)(2)(ii); Section 110(d)(2)(i); Section 110(d)(3)(i); Section 110(e)(2)(i); Section 110(e)(3)(i); Section 119(e)(1); Section 119b(a)(2); Section 130(1); and Section 133..	Atlanta Metropolitan Area.	February 16, 1999.	November 26, 2002.
* * * *	*	*	*

[FR Doc. 02–24490 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–63–2–7569; FRL–7384–6]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Louisiana; Emissions Reduction Credits Banking in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the Louisiana emission reduction credit (ERC) banking program as a revision to the Louisiana State Implementation Plan (SIP). The ERC banking regulation establishes a means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review (NSR) emission offsets. The revisions remove the requirement that ERCs in the bank be set aside as a contingency measure for the attainment demonstration. The revisions also remove the requirement that NSR netting be conducted with surplus ERCs from the bank. The revisions clarify the requirement that ERCs be surplus to all requirements of the Clean Air Act (the Act) when used. The EPA approves these revisions to the ERC banking regulation to satisfy the provisions of the Act which relate to the permitting of new and modified sources which are located in nonattainment areas. The EPA does not approve the revisions as an Economic Incentive Program (EIP), nor through this rule alone are we allowing the use of ERCs for interprecursor trading purposes or for alternate Reasonably Available Control Technology (RACT) compliance purposes. Pursuant to section 553(d) of the Administrative Procedure Act, EPA finds good cause to make this action effective immediately.

EFFECTIVE DATE: This rule will be effective on September 27, 2002.

ADDRESSES: Copies of the 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, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Louisiana Department of Environmental Quality, 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884.

FOR FURTHER INFORMATION CONTACT: Merrit H. Nicewander, Watershed Management Section (6WQ–EW), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7519 *(nicewander.merrit@epa.gov).*

SUPPLEMENTARY INFORMATION: This section is organized as follows:

I. What action is EPA taking?
II. What did EPA propose?
III. What comments did EPA receive, and what are our responses?
IV. Administrative requirements

Throughout this document ''we'' ''us'' and ''our'' means EPA.

I. What Action is EPA Taking?

We are granting approval of the Louisiana Department of Environmental Quality (LDEQ) ERC banking regulation as a component of the Louisiana SIP. The rule is promulgated by the State at LAC 33:III, Chapter 6 (Regulations on Control of Emissions Through the Use of Emission Reduction Credit Banking), as published in the Louisiana Register on February 20, 2002. The Governor of Louisiana submitted this rule to the EPA as a SIP revision on March 4, 2002.

Our approval of the revised ERC bank rule was necessary to reflect the rescission of the contingency measures' enforceable process contained in section 621 of the rule, to incorporate the ''Surplus When Used'' provision in accordance with the Act and our Administrator's Order of December 22,

2000, to remove the requirement that netting reductions for nonattainment new source review (NNSR) purposes meet the surplus requirement of the emissions bank and to remove section 611 regarding mobile sources emission reductions, which we had not previously approved as part of the SIP. In addition, the revised rule removed section 623, which covered the withdrawal, use and transfer of ERCs, and section 625, which covered the application and processing fees. Our approval of the revised rule, including the removal of these sections, does not constitute a relaxation of the SIP, since any and all relevant portions of these sections have been incorporated into the revised rule.

We approved the previous LDEQ Chapter 6 banking rule on July 2, 1999. That SIP approval did not include section 611, Mobile Source Emission Reductions, which the State had promulgated in August 1994, but did include sections 621, 623 and 625. Section 623 covered the withdrawal, use and transfer of ERCs. Section 625 covered the application and processing fees. We are granting approval of the LDEQ revised Chapter 6 bank rule to reflect the removal of sections 611, 621, 623 and 625.

The purpose of the revised rule is to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review offsets. This purpose provides flexibility to stationary sources when they undergo NNSR, allowing sources in need of emissions offsets to identify another stationary source that may have surplus emission reductions available for purchase as NNSR offsets. Although Section 601 states that the purpose of the rule is to ''identify and preserve'' emission reductions for NNSR offsets, the revised rule does not itself provide a mechanism for ''preserving'' emission reductions until the permitting stage. That is, under LAC 33:III.617(C)(2), emission reductions can only be preserved after they are identified in the ERC certificate and LDEQ determines during the permit review process that they are ''Surplus When Used.''

Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. If, however, an Agency identifies a good cause, section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. EPA is making this action effective immediately because this rule is related to the Baton Rouge 1-hour ozone Attainment Plan and Transport State Implementation Plan, on which the EPA intends to take imminent action (see 67 FR 50391, August 2, 2002). In conjunction with its August 2, 2002, proposed approval of the attainment demonstration, EPA proposed to extend the ozone attainment date for the Baton Rouge area to November 15, 2005, while retaining the area's current classification as a serious ozone nonattainment area and to withdraw EPA's June 24, 2002, rulemaking determining nonattainment and reclassification of the BR area (67 FR 42687). The effective date of EPA's June 24, 2002, nonattainment determination and reclassification is imminent. Furthermore, making this action effective immediately does not impose any additional requirements, because the underlying regulations are already effective under state law.

II. What Did EPA Propose?

In spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, it does not establish an ERC bank, and we therefore did not propose approval of the rule as an ERC bank. The program established by the revised rule merely functions as a bulletin board to facilitate stationary source communications and offset purchases before certification and use of ERCs in an NNSR permit application. Similarly, the program established by the revised Chapter 6 rule is not itself a market-based program for achieving air quality improvements, and is therefore not an EIP as defined by the EPA. Instead, the program may be used to reduce the administrative burden experienced by stationary sources obtaining emission reductions as a part of New Source Review permitting. Accordingly, we proposed approval of the revised Chapter 6 rule with the understanding that the program it establishes will be used in conjunction with the revised Chapter 5 NNSR rule to facilitate stationary source communications and offset purchases before certification and use of an ERC in an NNSR permit application.

An emissions banking rule that functions merely to facilitate communication between stationary sources is not within the scope of the guidance document ''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R–01–011 (EPA Office of Air and Radiation, January 2001) (the EIP Guidance). We therefore did not review the revised rule for consistency with the EIP Guidance.

We proposed approval of the rule as meeting the requirements for SIP approval under Title I Part D and section 110 of the Act.

III. What Comments Did EPA Receive and What are EPA's Responses to Comments?

The Steering Committee of the Baton Rouge Ozone Task Force, the Leadership Team of the Baton Rouge Ozone Task Force, the Louisiana Chemical Association and the Louisiana Mid-Continent Oil and Gas Association comments.

Comment: Each of these parties commented by providing a statement of support for our proposed approval of the LDEQ revised ERC regulation.

Response: We have considered these statements of support in making our final determination.

Louisiana Generating LLC Comment

Comment: Louisiana Generating LLC (LaGen) commented that LDEQ's proposed Attainment Plan/Transport SIP revisions contain a proposed Control Strategy Element, Section 4.2.1 Permitting NO_X Sources, that could result in the imposition of the equivalent of the nonattainment rules in an attainment area without authority of law. LaGen stated that the revised LDEQ bank regulation is not approvable to the extent that any of the provisions of the regulation could be implemented to support requiring offsets of new facilities or major modifications in attainment parishes.

Response: The stated purpose of the LDEQ ERC revised rule in section 601 is to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for NSR offsets. As noted above, the program established by the revised rule does not function as an ERC banking or trading program, but merely as a bulletin board to facilitate stationary source communications and offset purchases before certification and use of ERCs in an NNSR permit application. The revised rule does not contain any provisions that could be implemented to support requiring offsets of new facilities or major modifications in attainment parishes. We therefore do not find in this comment any basis for disapproval of the proposed ERC bank rule.

State of Louisiana Department of Environmental Quality comments

Comment: LDEQ strongly supported our proposed approval, but requested several corrections and clarifications. One comment stated that our proposed approval notice at 67 FR 48086 indicated that LDEQ defined the term ''Surplus Emission Reductions'' whereas the rule at LAC 33:III.605 defines the term ''Surplus'' but not ''Surplus Emission Reductions'.

Response: We have considered these statements of support in making our final determination.

The LDEQ comment regarding ''Surplus Emission Reductions'' is correct. The referenced sentence in our proposed approval notice should have read: '''Surplus'' emission reductions are defined in LAC 33:III.605 as emission reductions voluntarily created for an emissions unit; not required by any local, state or federal law, regulation, order, or requirement; and in excess of reductions used to demonstrate attainment of federal and state ambient air quality standards.''

Comment: The second LDEQ comment indicated the appearance of missing text at 67 FR 48086.

Response: LDEQ correctly noted a typographical error in our proposed approval notice, although the error consisted of extra text (the words ''the voluntary reduction'') rather than missing text. The referenced sentence in our proposed approval notice should have read: ''Emissions reductions below these ''baseline emissions'' are considered surplus, and under the rule are calculated by subtracting future allowable emissions after the reductions from the baseline emissions.''

Comment: The third LDEQ comment requested clarification that the ''surplus'' determination is made at the time a permit application that relies upon the reductions as offsets is deemed administratively complete. Our proposed approval notice at 67 FR 48088 indicated that it was at the time of the State's evaluation of the permit application.

Response: We agree with LDEQ that a ''surplus'' determination is made at the time a permit is deemed administratively complete, as is apparent from the definition of ''surplus'' in Section 605 of the revised Louisiana rule, and from Section 617(a), which says that LDEQ will review an application for ERCs when a request is submitted to use the ERCs as offsets. Thus, the State's verification that the ERCs are surplus must be conducted when they are to be used, not when they are acquired (or submitted for certification or purchased). We agree with LDEQ that the most appropriate time for LDEQ to make its review and determination as to ''surplus'' is after the application is deemed administratively complete. (This timing is consistent with EPA policy regarding determinations for netting purposes.)

Comment: LDEQ commented that the State has recently promulgated and revised the NO_X control regulation in Chapter 22. Our proposed approval notice stated that the State has recently revised the NO_X control regulation in Chapter 22.

Response: We agree with LDEQ that the State has recently promulgated and revised the NO_X control regulation.

Tulane Environmental Law Clinic Comments

Tulane submitted the comments by fax on August 26, 2002. The EPA is under no obligation to extend the comment period or to accept late comments. We decided to accept comments which were received by our office by close-of-business on August 26, 2002. This time frame corresponds to the estimated travel time for first class mail for a letter mailed and postmarked on the last day of the comment period, August 22, 2002.

Comment: The compliance date for NO_X sources is May 1, 2005. Voluntary NO_X reductions before this date could be deemed surplus and therefore eligible for use as emission offsets, which could allow facilities to offset new VOC emissions by early RACT implementation.

Response: The EPA disagrees with the commenter's interpretation that facilities which elect to implement RACT before the compliance date required by the rule, May 1, 2005, would generate reductions eligible for use as emission offsets.

Louisiana promulgated its revised NO_X rules on February 20, 2002 (Louisiana Register, Vol. 28, No. 2). On February 27, 2002, the State submitted to EPA the revised NO_X rules for the Baton Rouge area and its Region of Influence. The revised NO_X rule requires certain affected categories of NO_X-generating facilities to achieve RACT ''as expeditiously as possible, but no later than May 1, 2005.'' This date takes into consideration the time affected categories of NO_X-generating facilities may need to procure, calibrate and implement RACT. On July 23, 2002, the EPA proposed approval of the SIP revisions to regulate emissions of NO_X to meet requirements of the CAA (67 FR 48095). Section 173(c)(2) of the Act states that reductions otherwise required by the Act are not creditable as offsets. Although the rule permits affected categories of NO_X-generating facilities to achieve compliance with NO_X RACT no later than May 1, 2005, the rule became effective when promulgated. Therefore, facilities achieving NO_X RACT compliance before May 1, 2005, are creating emission reductions as required by law. Therefore, such facilities will not obtain ERCs and cannot offset VOC emissions by early RACT implementation. Furthermore, emissions decreased by a voluntary action must be permanent in order to meet the surplus ERC criteria. Because the rule provides for compliance no later than May 1, 2005, reductions made before that date could not be considered permanent, and therefore could not be surplus.

For the above reasons, the comment does not indicate that any change to the rule is required.

Comment: Tulane states, as an example of a ''segmented approach'' by which they charge that EPA has avoided addressing how various state rules will operate together, that EPA acknowledged at 67 FR 48097 that Louisiana will need to develop a two-balance system for tracking NO_X reductions, but deferred analysis of that issue to a ''separate **Federal Register** document'' that has yet to be issued.

Response: We disagree, both as to the general proposition that a ''segmented approach'' allowed the EPA to avoid issues, and as to the specific charge that EPA failed to present the promised analysis of the two-balance NO_X reduction system.

We first note that both our proposed approval of the revised Chapter 6 rule and our proposed approval of the revised Section 504 rule (NNSR) addressed the general topic: ''How Does the State's NSR Regulation in Chapter 5 Interact With the NO_X Control Regulation in Chapter 22 and the Revised Banking Regulation in Chapter 6.''

Regarding the ''deferred analysis'' comment, the full sentence from which the above quotation was taken reads as follows: ''We will be proposing action on Louisiana's ERC accounting in a separate **Federal Register** document.'' That document was our proposed approval notice of the LDEQ revised ERC rule, which contained substantial discussion of the workings of the two-balance ERC system. See 67 FR 48087–48089. In addition, we requested in our proposed approval of the Chapter 5 NNSR rule ''that in response to comments on EPA's proposed approval of the Chapter 5 and Chapter 6 rules, the State affirm and detail the procedures for the determination of NO_X surplus ERCs resulting from the split emission limitations for the NO_X RACT rule in Chapter 22''. 67 FR 48089. Additional discussion of this issue appears later in this section.

Comment: VOC increases from the Interpollutant Trading and NO_X rules will have a disproportionate impact on minority communities, contrary to EIP Guidance, especially sections 16.2 and 16.9.

Response: The purpose of the revised ERC rule is to establish the means of

enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review offsets. Since the rule does not by itself directly reduce emissions or improve air quality, and is instead intended solely to enable stationary sources to identify and acquire NO_X and VOC offsets for NNSR purposes, the rule was reviewed as a component of the SIP related to the NNSR offsets rule, not as an Economic Incentive Program. Thus, the EIP Guidance is not applicable to the revised ERC rule.

The revised rule does not contain any reference to an inter-precursor trading (that is, the trading of emission reductions of one pollutant's precursors for emission reductions of a different precursor for that pollutant) program. The purpose of the rule does not include inter-precursor, or for that matter, any emissions trading. The new source permitting regulation in Chapter 5, on the other hand, refers to what we consider inter-precursor trading. Under the revised Chapter 5 procedure, the State's verification that the ERCs are surplus must be conducted when they are to be used, not when they are acquired (or submitted for certification or purchased). Thus, inter-precursor trades are appropriately reviewed, evaluated and verified under the NSR program at the time of use. The comment is therefore not relevant to our approval of the proposed ERC bank rule. Further discussion of this issue will appear in our final rule regarding the revised NNSR rule, to be published in a separate **Federal Register** document.

Comment: The ERC bank is broken, is awaiting audit, and is not capable of tracking the expanded and more complicated emission offsets proposed in Louisiana's NO_X and NSR rules. EPA should not approve any banking rule until the concerns raised in the public petition for an audit of the bank are addressed.

Response: We disagree that the program established by the revised ERC rule is broken. As stated earlier, the purpose of the LDEQ ERC revised rule is to establish the means of enabling stationary sources to identify and ''preserve'' or acquire emission reductions, the acceptability of which is later determined by the LDEQ, in the permitting process for NSR offsets. In spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, the State did not adopt, nor did we propose to approve, the revised rule to function as an ERC bank or trading program. Rather, the revised rule merely provides a bulletin board to facilitate stationary source communications and offset purchases before potential certification and potential use in an NSR/NNSR permit application. The so-called ''bank'' in the revised rule will not itself provide ERCs that may be used for NSR/NNSR trading. The State makes a case-by-case determination in each individual permit application process about the validity of the ERCs relied upon in an application by a source owner/operator.

The revised ERC bank rule removes the necessity that ERCs be tracked to ensure that the bank contains sufficient ERCs for attainment demonstration contingency purposes. Our action approves a revision that is simplifying the function of the bank, not complicating it as indicated by the comment.

Comment: The deletion in the proposed ERC rule of language clearly disqualifying emissions reductions taken pursuant to a compliance order or consent decree from use as emissions offsets opens the door to illegal offsetting. Section 173(c)(2) prohibits the banking of credits for any emission reductions otherwise required by the Act.

Response: We disagree that the definitions of ''surplus'' and ''enforceable'' in the revised ERC rule open the door to illegal offsetting. As stated above, ''surplus'' emission reductions are defined in LAC 33:III.605 as, among other things, emission reductions not required by any local, state or federal law, regulation, order, or requirement. Compliance orders and consent decrees are orders as well as requirements of the Act, and emission reductions required under such an order or decree cannot be classified as surplus.

Comment: By eliminating the requirement that emission reductions be creditable under the definition of netting, Louisiana's proposed ERC rule violates federal law and must not be approved. Netting is a form of emission offsetting. LDEQ is now proposing to allow netting of emission reductions that do not qualify as ERCs, in violation of EPA policy and the Act. The definition of netting in the ERC rule violates section 173(c) of the Act and therefore LDEQ must not adopt the proposed rule as written.

Response: We disagree that netting is a form of emission offsetting. The term netting is derived from the NSR definition of ''net emission increase'' at 40 CFR 51.165 and 40 CFR 52.21. The net emission increase due to a specific project is the project emission increases plus any creditable, contemporary emission increases and decreases at the stationary source. Creditable in this sense refers among other things to the emissions not having been relied upon in the issuance of a major NSR permit during the contemporaneous period, as detailed at 40 CFR 51.165. The contemporaneous period in Louisiana has been defined as five years. Netting is the summation of the creditable contemporaneous emission increases and decreases at the facility. If the project emission increase exceeds the major modification threshold but the creditable, contemporaneous emission decreases are large enough, the net emission increase may be less than the major modification threshold. In this instance, the source would be said to ''net out'' of major source NSR review.

Section 173(c) of the Act refers to emission offsets required for emission increases resulting from major modifications and major new sources. It applies to major emission increases that result after the netting has been performed in the determination of the net emission increase. By previously requiring that all creditable, contemporaneous emission decreases be surplus ERCs from the bank, the LDEQ requirement for netting was more stringent than the federal requirement. By removing the surplus ERC requirement from the netting determination, the LDEQ NSR netting requirement is now equivalent to the federal requirement in 40 CFR 51.165 and 40 CFR 52.21.

Comment: Section 603(A) of the revised ERC rule apparently allows for trading of ERCs between five attainment parishes and five parishes in the Baton Rouge nonattainment area, in violation of section 173(c)(1) of the Act. If it is LDEQ's intent to allow such trading, it should rescind the rule immediately as contrary to federal law. If it is not LDEQ's intent to allow such trading, it should clearly so state within the regulation.

Response: We agree that section 173(c)(1) of the CAA does not permit trading of offsets between attainment areas and nonattainment areas. We disagree that Section 603(A) of the revised ERC rule permits such trading. Instead, Section 603(A) specifically provides that ''[o]ther sources located in EPA-designated ozone attainment areas may not participate in the emissions banking program.'' If the commenter is specifically concerned about the reference in Section 603(A) to Calcasieu Parish, which states that ''[m]inor stationary sources located in ozone nonattainment areas or Calcasieu Parish may submit ERC applications for purposes of banking,'' we respond that the reductions from Calcasieu Parish sources (or sources in any other attainment area) may not be used as

offsets by sources in nonattainment areas, under Section 504(F)(9) of the revised NNSR rule. The reference to Calcasieu in Section 603(A) is relevant to sources in *Calcasieu Parish* that are seeking offsets in accordance with LAC 33:III.510.

In addition, as mentioned previously, the purpose of the LDEQ ERC revised rule is to establish the means of enabling stationary sources to identify and ''preserve'' or acquire emission reductions, the acceptability of which is later determined by the LDEQ, in the permitting process for NSR offsets. In spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, the State did not adopt, nor did we propose to approve, the revised rule to function as an ERC bank or trading program. Rather, the revised rule merely provides a bulletin board to facilitate stationary source communications and offset purchases before potential certification and potential use in an NSR/NNSR permit application. The so-called ''bank'' in the revised rule will not itself provide ERCs that may be used for NSR/NNSR trading. The State makes a case-by-case determination in each individual permit application process about the validity of the ERCs relied upon in an application by a source owner/operator.

Comment: EPA must not approve the ERC rule revisions because LDEQ cannot provide assurance, as required by the Act, that it has adequate personnel or funding to maintain the program.

Response: The purpose of the LDEQ ERC revised rule is to function as a bulletin board to facilitate stationary source communications and offset purchases before certification and use in an NNSR permit application. The ''bank'' established by the revised rule will not itself provide ERCs that may be used for trading. The revised rule removes the necessity that ERCs be tracked by the State, and the requirement that there be sufficient escrowed ERCs for attainment demonstration contingency purposes. The state's and our action is simplifying the function of the bank.

Comment: Louisiana's NO_X rule providing for seasonally fluctuating emission limitations for stationary sources is unworkable, introducing unnecessary complication and the potential for abuse, and reducing the public's ability to monitor the program.

Response: Because the revised rule provides for a bulletin board rather than a traditional bank, the stationary sources seeking to sell or buy ERCs will bear the brunt of whatever additional complication is introduced by the seasonal approach contained in the NO_X rule. LDEQ will not be required to track or monitor a stored balance of offsets, but instead primarily to evaluate the validity of ERCs at the time it receives application to use them. The simplified function of the bank will likewise increase the public's ability to monitor the program.

Comment: EPA has stated that the NO_X rule does not address the requirement to keep separate documentation for the certification, determination, and recordkeeping of NO_X ERCs during the ozone and non-ozone seasons. EPA proposes to accept promises in a letter from Mr. Dale Givens regarding the operation of the bank. As of July 23, 2002, the State had not detailed the procedures required.

Response: In our proposed approval of the revised Chapter 6 ERC rule, we stated that the Chapter 6 rule (not the Chapter 22 NO_X rule, as the commenter stated) ''does not address the requirement to keep separate documentation for the certification, determination, and recordkeeping of NO_X ERCs during the ozone and non-ozone seasons. The identification, certification, acquisition, recordkeeping and determination of ''Surplus When Used'' emission reduction credits must be for both the ozone season and the non-ozone season time periods.''

We did not condition our approval of the Chapter 6 rule on the receipt of additional information from the State. The stated purpose of the revised emissions banking rule in Chapter 6 is to enable stationary sources to identify and acquire emission reductions for NSR purposes. The Chapter 6 rule does not establish a ''bank'' requiring tracking by the State of sources' claimed ERCs. The Chapter 6 rule only establishes a bulletin board for use by source owners and operators. The LDEQ makes the determination whether a source's claimed ERCs are surplus through the Chapter 5 nonattainment NSR rules. The identification, certification, acquisition, recordkeeping and determination of ''Surplus When Used'' emission reduction credits must be for the ozone season and the non-ozone season time periods. The State indicated by letter from Mr. Dale Givens to EPA dated May 3, 2002 that the State would implement the rule by operating the Chapter 6 emissions reduction credits bulletin board in such a manner. EPA has received information from the State supplementing its May 3, 2002, letter and further supporting the State's intention to implement the Chapter 5 NSR rule in a manner that provides for separate identification, certification, acquisition, recordkeeping and determination of ''Surplus When Used'' emission reduction credits for the ozone season and for the non-ozone season time periods. For these reasons, the comment does not indicate that any change to the rule is required.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

B. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

C. Executive Order 13175

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and

Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. This rulemaking does not affect the communities of Indian tribal governments. Accordingly, the requirements of Executive Order 13175 do not apply.

D. Executive Order 12898

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The EPA believes that this rule should not raise environmental justice issues. The overall result of the program is regional reductions in ozone. Because this program will likely reduce local ozone levels in the air, and because there are additional provisions under the CAA to ensure that ozone levels are brought into compliance with national ambient air quality standards, it appears unlikely that this program would permit adverse affects on local populations.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Pursuant to 5 U.S.C. 605(b), I certify that today's rule would not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

F. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed above, that because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty, it does not constitute a Federal mandate, as defined in section 101 of the UMRA.

G. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This action merely approves a state rule implementing a Federal standard, and does not alter the relationship of the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this final action.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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.

I. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States before publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 20, 2002.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart T—Louisiana

2. In § 52.970 the table in paragraph (c) is amended under chapter 6 by removing the entries for sections 621, 623, and 625 and revising the entries for sections 601, 603, 605, 607, 613, 615, 617, and 619 to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
*	*	*	*	*
Chapter 6—Regulations on Control of Emissions Reduction Credits Banking				
Section 601.	Purpose	Feb. 2002, LR 28:301	September 27, 2002 and FR cite.	
Section 603.	Applicability	Feb. 2002, LR 28:301	September 27, 2002 and FR cite.	
Section 605.	Definitions	Feb. 2002, LR 28:301	September 27, 2002 and FR cite.	
Section 607.	Determination of Creditable Emission Reductions	Feb. 2002, LR 28:302	September 27, 2002 and FR cite.	
Section 613.	ERC Bank Recordkeeping and Reporting Requirements.	Feb. 2002, LR 28:303	September 27, 2002 and FR cite.	
Section 615.	Schedule for Submitting Applications	Feb. 2002, LR 28:304	September 27, 2002 and FR cite.	
Section 617.	Procedures for Review and Approval of ERCs ...	Feb. 2002, LR 28:304	September 27, 2002 and FR cite.	
Section 619.	Emission Reduction Credit Bank	Feb. 2002, LR 28:305	September 27, 2002 and FR cite.	
*	*	*	*	*

[FR Doc. 02–24638 Filed 9–26–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–62–1–7571; FRL–7384–5]

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: Final rule.

SUMMARY: The EPA is approving revisions to the Louisiana State Implementation Plan (SIP). This rulemaking covers two separate actions. First, we are approving revisions to the Louisiana Nitrogen Oxides (NO_X) 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). In this document, we will refer to this revision as Action Number 1. The revisions concern Reasonably Available Control Technology (RACT) for point sources of NO_X in the BR area and its Region of Influence. Second, we are approving revisions to the Louisiana NO_X rules for lean burn engines within the BR ozone nonattainment area as submitted to us on July 25, 2002 (the July 25, 2002, SIP revision). In this document, we will refer to this revision as Action Number 2. The February 27, and July 25, 2002, SIP revisions will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the BR area. The EPA is finalizing approval of these 2 SIP revisions to regulate emissions of NO_X as meeting the requirements of the Federal Clean Air Act (the Act).

The EPA is making these 2 SIP revisions effective immediately. *See* section 2 of this document for more information.

DATES: This rule will be effective on September 27, 2002.

ADDRESSES: 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