FOR FURTHER INFORMATION CONTACT: Anne Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no relevant adverse comments in response to this rule, we contemplate no further activity. If EPA receives relevant adverse comments, we will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: June 21, 2002.

Ira Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 02–18395 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7249–9]

Approval and Promulgation of Implementation Plans; Louisiana; Emission Reduction Credits Banking in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Louisiana State Implementation Plan (SIP). The revisions concern the establishment of a means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review (NSR) offsets. The revisions remove the requirement that emission reduction credits (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 proposes to approve these revisions 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 propose to approve the revisions as an Economic Incentive Program (EIP), nor through this rule alone to allow the use of ERCs for inter-precursor trading purposes or for alternate Reasonably Available Control Technology (RACT) compliance purposes.

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

ADDRESSES: Written comments should be addressed to David Neleigh, Chief, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884.

FOR FURTHER INFORMATION CONTACT: Merrit Nicewander of EPA Region 6 Air Permits Section at (214) 665–7519 at the address above.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background Information

Why Is This Action Necessary?

The Baton Rouge area consists of the following parishes: East Baton Rouge, West Baton Rouge, Ascension, Livingston, and Iberville. The Baton Rouge area (40 CFR 81.319) was classified as a serious ozone nonattainment area.

We received the Louisiana rule that we are considering in this proposed action on December 31, 2001, as a component of the Attainment Plan and Transport Demonstration (hereinafter, the Attainment Plan/Transport SIP) for the Baton Rouge area submitted by the LDEQ. This revision to the Attainment Plan/Transport SIP specifies emission reduction strategies designed to bring the Baton Rouge area into compliance with the ozone NAAQS. One component of the Attainment Plan/Transport SIP is the revised emission reduction credit banking regulation that has been enacted at Louisiana Administrative Code (LAC) 33:III Chapter 6. This action is necessary to determine whether that revised rule is an approvable component of the Attainment Plan/Transport SIP.

Does the currently EPA approved SIP contain an emission reduction credit banking regulation?

Yes, we proposed approval (63 FR 44192) on August 18, 1998 of revisions to the Louisiana State Implementation Plan (SIP) for the Baton Rouge ozone nonattainment area for revisions to the 1990 base year emission inventory, the Post-1996 Rate-of-Progress (ROP) Plan, its associated 1999 Motor Vehicle Emissions Budgets (MVEBs) for the area, Attainment Demonstration, the Contingency Measures Plan, and the State's point source emissions banking regulations. We promulgated final approval (64 FR 35930) of the SIP revisions, including the emission reduction credit (ERC) banking regulation on July 2, 1999. The Louisiana Department of Environmental Quality (LDEQ) ERC banking regulation is codified as Louisiana Administrative Code (LAC) 33:III Chapter 6.

EPA's July 2, 1999 approval of the LDEQ Chapter 6 rule is summarized below:

LDEQ CHAPTER 6.—REGULATIONS ON CONTROL OF EMISSIONS REDUCTION CREDITS BANKING

	Original LDEQ date of action	EPA date of action
Section 601 Background and Purpose	Aug. 1994, LR20:874	[July 2, 1999, 64 FR 35930]

LDEQ CHAPTER 6.—REGULATIONS ON CONTROL OF EMISSIONS REDUCTION CREDITS BANKING—Continued

	Original LDEQ date of action	EPA date of action
Section 603 Applicability	Aug. 1994, LR20:874	[July 2, 1999, 64 FR 35930]
Section 605 Definitions	Aug. 1994, LR20:874	[July 2, 1999, 64 FR 3590]
Section 607 Stationary Point Source Reductions.	Aug. 1994, LR20:877	[July 2, 1999, 64 FR 35930]
Section 613 ERC Bank Balance Sheet	Aug. 1994, LR20:877	[July 2, 1999, 64 FR 35930]
Section 615 Schedule for Submitting Applications.	Aug. 1994, LR 20:878	[July 2, 1999, 64 FR 35930] Approves original LDEQ rule (adopted 8/94) and subsequent revision (adopted 07/95)
Section 617 Review and Approval of ERC Bank Balance Sheets.	Aug. 1994, LR20:878	[July 2, 1999, 64 FR 35930]
Section 619 Registration of Emission Reduction Credit Certificates.	Aug. 1994, LR20:879	[July 2, 1999, 64 FR 35930]
Section 621 Protection of Banked ERCs	Aug. 1994, LR20:679	[July 2, 1999, 64 FR 35930]
Section 623 Withdrawal, Use, and Transfer of Emission Reduction Credits.	Aug. 1994, LR20:880	[July 2, 1999, 64 FR 35930]
Section 625 Application and Processing Fees	Aug. 1994, LR20:880	[July 2, 1999, 64 FR 35930]

We proposed approval of the LDEQ Chapter 6 emissions banking rule as meeting the requirements for SIP approval under Title I Part D and section 110 of the Act. We did not approve the banking regulations as an economic incentive program (EIP) pursuant to the EPA's Economic Incentives Program Rules (59 FR 16690) and section 182(g) of the Act. 64 FR 35936.

What Did Louisiana Submit as Contingency Measures in the Post-1996 ROP Plan/Attainment Demonstration SIP?

Louisiana identified, in both its 15% and Post-1996 ROP Plans submittals, the State's point source VOC/NO_X banking regulations (LAC 33:III sections 601, 603, 605, 607, 613, 615, 617, 619, 621, 623, and 625) 2 as a three percent contingency measure intended to meet the requirements of sections 172(c)(9) and 182(c)(9) of the Act. The banking regulations were initially submitted to the EPA for approval in the December 15, 1995, 15% ROP Plan submittal. The EPA deferred taking action on the regulations in the context of the 15% ROP Plan approval until its rulemaking action on the Post-1996 ROP Plan/Attainment Demonstration SIP. (The rationale for ''carving out'' the contingency measures was explained in detail in the TSD to the August 18, 1998, proposed rulemaking as well as the TSD to the 15% ROP Plan rulemaking.)

In the December 22, 1995, Post-1996 ROP Plan submittal, the State provided a table of the emissions reductions that had been banked by industry pursuant to the regulations. The State's contingency measure requirement was 5.7 tons/day of VOCs (three percent times the adjusted base year inventory of 191.2 tons/day). The VOC reductions ''on deposit,'' 13.0 tons/day, were well in excess of the three percent requirement.

We determined in the July 2, 1999 rulemaking that the State met the contingency measures requirements by having adopted and submitted the point source banking regulations, and demonstrated that the bank had sufficient VOC credits ''on deposit'' and available for confiscation in the event of a missed milestone/failure to attain. Furthermore, we determined that the banking rules provided for expeditious implementation of the contingency measures consistent with the time frames identified in the General Preamble.

What are contingency measures?

Under section 172(c)(9) of the Act, ozone nonattainment areas classified as moderate or above must submit contingency measures to be implemented if RFP is not achieved or if the standard is not attained by the applicable attainment date. The ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved in a timely manner and additional planning by the State is needed.

In the General Preamble, the EPA interpreted the Act to require States with moderate and above ozone nonattainment areas to include sufficient contingency measures in their November 1993 submittals so that, upon implementation of such measures, additional emissions reductions of up to three percent of the emissions in the adjusted base year inventory (or a lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

Additional contingency provisions are included in section 182(c)(9) for serious ozone nonattainment areas. These latter provisions are similar to the section 172(c)(9) requirements except that the focus in section 182 (Ozone Areas) is on meeting emissions reductions milestones (section 182(g)).

On What Basis Did We Approve the LDEQ Chapter 6 Emission Reduction Credit Banking Regulation on July 2, 1999 (64 FR 35930)?

We took final action to approve the already-banked VOC emissions reductions credits (totaling 5.7 tons/day) toward meeting the three percent contingency measure requirement pursuant to sections 172(c)(9) and 182(c)(9) of the Act.

We determined that the point source VOC/NOX banking regulations were generally consistent with the Act, EPA policy/guidance and Federal regulations. Therefore, we took final action to approve the State's banking regulations as meeting the requirements for SIP approval under part D and section 110 of the Act.

What Is an Economic Incentive Program (EIP)?

An economic incentive program is a regulatory program that achieves an air quality objective by providing market-based incentives or information to emission sources. A uniform emission reduction requirement, based for instance on installation of a required

emission control technology, does not take account of variations in processes, operations, and control costs across sources even of the same type, such as electric utilities, or petroleum refiners. By providing flexibility in how sources meet an emission reduction target, an EIP empowers sources to find the means that are most suitable and most cost-effective for their particular circumstances.

EIPs can be either mandatory (required by the CAA) or discretionary (a program chosen by a state or tribe).

What Is the Section 182 Requirement for an EIP?

Under section 182(g)(3), if a State fails to submit a milestone compliance demonstration for any serious or severe area as required by section 182(g)(2), the State must choose from three options: to bump up to the next higher classification, to implement additional measures (beyond those in the contingency plan which will already be triggered and implemented) to achieve the next milestone, or to adopt an economic incentive program (as described in section 182(g)(4)). Under section 182(g)(5), if a State fails to submit a compliance demonstration for any extreme area as required by section 182(g)(2), or if the area has not met an applicable milestone as required by section 182(g)(1), the State must submit a plan revision to implement an economic incentive program (as described in section 182(g)(4)) within 9 months of such failure.

A mandatory EIP was not, and still is not, required for the Baton Rouge serious ozone nonattainment area. We encourage the adoption of discretionary EIPs by States where appropriate, as allowed for in the Act (section 110(a)(2)(A)), as a means of stimulating the adoption of incentive-based, innovative programs that will assist States in meeting air quality management goals. As explained below (under ''What is the purpose of the revised State emissions banking rule?''), the revised LDEQ Chapter 6 emissions banking rule does not establish a discretionary EIP, although it contains some of the features of one.

What Are the EPA's Economic Incentive Program Rules, Promulgated at 59 FR 16690?

The regulations, promulgated at 59 FR 16690, appear at 40 CFR part 51, subpart U—Economic Incentive Programs §§ 51.490—51.494). The rules in Subpart U apply to any mandatory economic incentive program submitted to the EPA to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act. The LDEQ Post-1996 ROP Plan and Attainment Demonstration SIP revision submittal revisions did not include the ERC bank rules for EPA approval as a section 182 mandatory EIP.

Subpart U was also promulgated to serve as our policy guidance on discretionary EIPs submitted as implementation plan revisions. EPA has since developed additional guidance on discretionary EIPs (''Improving Air Quality With Economic Incentive Programs,'' EPA/452/R–01–001, January 2001) (the ''EIP Guidance'').

As further discussed below, the revised Louisiana ERC banking regulation does not establish either a mandatory or discretionary EIP, and therefore the above guidance does not directly apply.

What Are the Submitted Revisions to the Emission Reduction Credit Banking Rule?

EPA action is necessary because the banking rule has been revised in several ways, and the State of Louisiana is now requesting that EPA approve the revised rule as a component of the Baton Rouge SIP. A summary of the revisions to the banking rule follows.

First, the LDEQ removed Section 621 of the LDEQ ERC banking regulation that we approved into the SIP for contingency purposes on July 2, 1999. That section of the rule provided a process for the confiscation by the LDEQ of banked ERCs in the case of failure to meet rate of progress/attainment requirements. The submitted regulation has removed this. The State submitted a substitute contingency measures plan that we have proposed to approve, as published on May 20, 2002 at 67 FR 35468.

Second, the revisions to the banking rule contain provisions that require ''Surplus When Used'' ERCs in accordance with Section 173(c)(2) of the Act and in response to our Administrator's Order of December 22, 2000 (the ''Borden Order''). The order was in response to a petition from the Louisiana Environmental Action Network (LEAN) filed on August 24, 1999 requesting the Administrator to object to the issuance of a state operating permit issued to Borden Chemicals, Inc. (Borden) for a new formaldehyde facility in Geismar, Ascension parish, Louisiana.

The order emphasizes the Act's requirements that ERCs used from the emissions bank as offsets must be surplus of State and Federal requirements at the time they are used as well as when they are generated or banked. LDEQ has revised the rule to clarify that ERCs in the emissions bank must be ''Surplus When Used'' for NNSR offset purposes in accordance with section 173(c)(2) of the Act and as discussed in the Borden Order.

Third, the previous emissions banking rule required that ERCs from the bank be surplus when used for NNSR netting purposes. There is no federal requirement that netting reductions be surplus when used from an emissions bank. The rule was revised to delete this state-only requirement that netting reductions be surplus.

We approved the LDEQ Chapter 6 banking rule on July 2, 1999, as summarized on the table in Part I BACKGROUND INFORMATION. That SIP approval did not include section 611, Mobile Sources 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 emission reduction credits. Section 625 covered the application and processing fees. The revised Chapter 6 banking rule that is the subject of this action removed sections 611, 621, 623 and 625. It is therefore necessary for us to propose approval of the Chapter 6 banking rule as part of the SIP with sections 611, 621, 623 and 625 removed.

Finally, the program established by the revised Chapter 6 Rule may be used in conjunction with the revised Chapter 5 rule, concerning nonattainment new source review (NNSR), to facilitate stationary source communications and offset purchases before certification and use of an ERC in an NNSR permit application.

For these reasons, it is necessary for us to propose an action on the submitted emissions banking regulation at LAC 33:III Chapter 6.

II. Summary of State Submittal

What Revised State Regulations Did We Evaluate?

We evaluated the LAC 33:III Chapter 6 Emission Reduction Credit Banking regulation, as published in the Louisiana Register on February 20, 2002 and submitted by the Governor on March 4, 2002. The rule was revised 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 Borden Order and to remove the requirement that netting reductions for NNSR purposes meet the surplus requirement of the emissions bank.

The rule was also revised to remove section 611 which covered 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 emission reduction credits, and section 625, which covered the application and processing fees. Our proposed 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.

The following sections of Chapter 6 were submitted by the State and are being acted upon by us in this proposed action.

State citation	Title/Subject	State approval date
Section 601	Purpose	Feb. 2002, LR 28:301
Section 603	Applicability	Feb. 2002, LR 28:301
Section 605	Definitions	Feb. 2002, LR 28:301
Section 607	Determination of Creditable Emission Reductions.	Feb. 2002, LR 28:302
Section 613	Bank Recordkeeping and Reporting Requirements.	Feb. 2002, LR 28:303
Section 615	Schedule for Submitting Applications	Feb. 2002, LR 28:304
Section 617	Procedures for Review and Approval of ERCs	Feb. 2002, LR 28:304
Section 619	Emission Reduction Credit Bank	Feb. 2002, LR 28:305

What Is the Purpose of the Revised State Emissions Banking Rule?

The purpose of the revised rule, as stated in section 601, 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 nonattainment new source review, 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 the State determines that they are ''Surplus When Used.''

Thus, in spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, it does not establish an ERC bank. Rather, the revised rule functions as merely a bulletin board to facilitate stationary source communications and offset purchases before certification and use of the ERC in an NNSR permit application. 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 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.

An emissions banking rule that functions merely to facilitate communication between stationary sources is not required to meet the Economic Incentive Program guidance. The guidance was developed to assist states and tribes in establishing programs to achieve emission reductions as required to meet SIP attainment demonstrations or to be traded for inter-precursor offsets purposes, or to facilitate the compliance requirements for alternative RACT requirements. For these reasons, EPA is not reviewing the revised rule for compliance with EPA's EIP Guidance.

Will Offsets Identified and Preserved Under the Revised State Emissions Banking Rule Satisfy the ''Surplus When Used'' Requirement?

As required by section 173(c)(2) of the Act, the revised rule provides at section 607(B)(1) that emission reductions must be surplus, permanent, quantifiable, and enforceable. ''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. LDEQ has revised the rule to clarify that ERCs in the emissions bank must be ''Surplus When Used'' for NNSR offset purposes in accordance with the Act and as discussed in the Borden Order. Section 617(C)(2) of the revised rule provides for the recalculation of ERCs at the time of permit issuance; therefore, given the surplus requirement of Section 607(b)(1), the revised rule is clear in requiring that ERCs be ''Surplus When Used.'' In addition to the ''surplus'' definitions discussed above, e.g., not required by any local law, etc., section 605 limits emission reductions as ''surplus'' to only emission reductions that have occurred ''at the time a permit application that relies upon the reductions as offsets is deemed administratively complete.''

Under the Revised State Banking Regulation, How Will ''Surplus When Used'' ERCs Be Calculated?

Section 607(C) of the revised rule provides procedures for calculating the surplus emission reductions. To calculate surplus emissions reductions, it is necessary to establish a baseline from which reduced emission levels can be determined. 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 the voluntary reduction.

Under the Revised State Banking Regulation, How Will ''Baseline Emissions'' Be Calculated?

The revised Chapter 6 procedure utilizes a ''universal growth'' concept in determining baseline emissions. This procedure is laid out in section 607(C)(4) of the revised rule. Under this procedure, the State must compare the current total point-source emissions inventory for the modeled parishes to the ''base case inventory'' (until November 15, 2005. After November 15, 2005, this comparison is to be made to the ''base line inventory''). (These inventories refer to the aggregate point-source emissions inventory for NO_X and VOC. The State prepares an annual inventory of actual point-source emissions. The base case and base line emission inventories are found in the most recent Attainment Demonstration. In essence the difference is that the base line inventory accounts for new attainment-related emission limitations, and hence will reflect lower emissions

due to the RACT limits established to support the attainment demonstration.)

If the current total point source emissions inventory is less than the base case (or, starting in November 15, 2005, the base line) inventory, then the universal growth of emissions in the nonattainment area is below that relied upon in the attainment demonstration modeling. Therefore, it is unnecessary for the determination of the actual emissions modeled in the attainment demonstration to be performed and used in determining baseline emissions, and baseline emissions will simply be the lower of (1) actual emissions or (2) adjusted allowable emissions. If, on the other hand, the current total point source emissions inventory exceeds the base case (or, starting in November 15, 2005, the base line) inventory, baseline emissions will be the lower of (1) actual emissions, (2) adjusted allowable emissions, or (3) the emissions attributed to the source in question in the base case or base line inventory. LAC 33:III.607(C)(4)(a).

Does the Revised State Banking Regulation Incorporate Interpollutant Trading?

No. There is no mention of interpollutant or inter-precursor trading in the revised banking rule. The revised banking rule only serves as a bulletin board for stationary sources to locate other stationary sources that may have offsets for sale. The rule is not an emissions banking or trading rule and is not an Economic Incentive Program. Using the revised rule itself for inter-precursor trading to meet nonattainment new source review offset requirements would be inappropriate. The inclusion of an inter-precursor emissions trading program in the revised bulletin board rule would subject the rule to review as an EIP.

Inter-precursor trading may, however, be conducted under the revised Chapter 5 rule concerning nonattainment New Source Review, using the Chapter 6 bulletin board to identify potentially available offsets. The revisions to Chapter 5 allow what EPA terms ''inter-precursor trading'' to offset an increase in emissions of VOCs with a decrease in emissions of NO_X. That rule states that all emission reductions claimed as offset credit for significant net NO_X increases shall be from decreases of NO_X. NO_X credits will be allowed to offset VOC increases, but not vice versa. All emission reductions claimed as offset credit for significant net VOC increases shall be from decreases of either NO_X or VOCs, or any combination. If NO_X decreases are used to offset VOC increases, the permit for which the offsets are required must have been issued on or before November 15, 2005.

III. Criteria for Evaluation

What Criteria Did We Use to Approve the Previous Emissions Banking Rule?

As stated above, the previous approval of Chapter 6 by us on July 2, 1999 was not as an Economic Incentive Program. The Chapter 6 regulation no longer provides an enforceable mechanism to confiscate the escrowed 5.7 tons/day of VOCs serving as the contingency measures in support of the attainment demonstration; nor does it provide any emission reductions in support of any attainment demonstration.

What Are the Applicable Criteria for Review of the Revised Emissions Banking Rule?

The revised State emissions banking rule is intended to facilitate communications among stationary sources seeking to identify possible nonattainment new source review emission offsets. Thus, it serves as a bulletin board among the regulated community. The revised State emissions banking rule must only be consistent with the Federal statutes and regulations governing the permitting of stationary sources in ozone nonattainment areas. The statutory requirements, as was the case in the July 2, 1999, EPA approval of the point source banking regulations as an acceptable SIP revision, appear at subchapter I, part A (section 110) and part D (sections 171–185B) of the Act.

What Are the Specific Statutory Requirements With Which the Revised Banking Rule Must Be Consistent?

Subchapter I, part D of the Act contains SIP requirements for nonattainment areas. Subpart I of part D contains the statutory requirements for nonattainment areas in general. Section 173 covers the permit requirements for the nonattainment areas. The Act allows new and modified stationary sources to be constructed in a nonattainment area if the State's SIP contains approved permitting program requirements by the time the source is to commence operation.

The Act requires that offsetting emissions reductions must be obtained, such that total allowable emissions from existing sources in the region (from new or modified minor sources and from the proposed source) will be sufficiently less than total emissions from existing sources before the permit application so that the reasonable further progress requirements are met.

In order to construct and operate in the nonattainment area, the proposed source is required to comply with the lowest achievable emission rate, and all other major stationary sources of the owner or operator in the State must be in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Act.

Section 172 of the Act covers nonattainment SIP provisions in general. Section 172(c)(6) contains SIP measures (including plan items) required to be submitted to comply with the Act. These SIP provisions must include enforceable emission limitations and other control measures as necessary to attain the NAAQS. These measures may include other means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance. Given that the Act in section 172 provides that a technique such as a marketable permits program may be appropriate for inclusion in a SIP, a bulletin board such as the revised State rule is consistent with the Act.

Section 173(c)(1) of the Act states that the owner or operator of a new or modified major stationary source may comply with any offset requirement of the Act for increased emissions only by obtaining emission reductions from the same source or other sources in the same nonattainment area. The emission reduction offsets must, by the time a new or modified source commences operation, be in effect and enforceable. The reductions must assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

Section 173(c)(2) states that emission reductions otherwise required by the Act are not creditable as emissions reductions for any offset requirement. Incidental emission reductions not otherwise required by the Act are creditable as emission reductions for offset purposes if they meet the requirements of section 173(c)(1).

What Are the Specific Regulatory Requirements With Which the Revised Banking Rule Must Be Consistent?

Federal regulations at 40 CFR 51.160 (Subpart I—Review of New Sources and Modifications) state that the SIP must contain the legally enforceable procedures to be followed in air permitting in an nonattainment area.

These legally enforceable procedures enable the State to determine whether the construction or modification of a stationary source will result in a violation of applicable portions of the SIP approved control strategy or will interfere with attainment of the NAAQS.

Federal regulations at 40 CFR 51.161 contain the requirements for public availability of the permit information. This section requires that the legally enforceable procedures identified in 40 CFR 51.160 must include an opportunity for the public to comment on the information submitted in the permit application. The information available for public comment must contain the State's analysis of the effect of the permit on ambient air quality including the State's proposed approval or disapproval of the permit application.

Federal regulations at 40 CFR 51.163 require the SIP to contain administrative procedures to be followed in making the determination required in 40 CFR 51.160.

Federal regulations at 40 CFR 51.165 contain the minimum federal permit requirements for nonattainment areas. Each SIP must adopt a preconstruction permit review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area that has been designated nonattainment for any NAAQS. (Nonattainment areas for Louisiana are listed at 40 CFR 81.319.)

The permit program must apply to any new major stationary source or major modification that is major for the pollutant (or pollutant precursor) for which the area is designated nonattainment. For each SIP containing a preconstruction review program, the baseline for determining credit for emissions reductions must be the emissions limit under the applicable SIP in effect at the time the application to construct is filed.

Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977).

IV. Technical Review

What Was the Basis for the Technical Review of the State Emissions Banking Rule as Revised in Chapter 6?

The purpose of the revised rule as stated in section 601 was to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review (NSR) offsets. The pollutants to which the rule applies are nitrogen oxides (NO_X) and volatile organic compounds (VOC). 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.

Was the State's Revised Emissions Banking Rule Reviewed as an Inter-Precursor Trading Program?

No, the revised rule does not contain any reference to an inter-precursor trading program. The purpose of the rule does not include inter-precursor, or for that matter any, emissions trading.

In keeping with the Act, a determination of whether the ERCs are surplus ''at use'' must be conducted by the State when they are to be used. The Chapter 6 regulation merely provides for stationary sources to identify and acquire ERCs. The new source permitting regulation in Chapter 5, on the other hand, refers to what EPA considers 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). Accordingly, the State's determination that an inter-precursor trade consists of surplus emission reductions must be made at the time of the State's evaluation of the permit application relying upon a trade. Thus, inter-precursor trades are appropriately reviewed, evaluated and verified as surplus under the NSR program at the time of use, which is at the time of the State's review of the permit application. Appropriately, the inter-precursor trading program is not contained in Chapter 6 and was not reviewed under this action. We are reviewing the inter-precursor trading program separately as a part of our review of Louisiana's revisions to its Chapter 5 nonattainment new source review regulations.

Was the State's Revised Emissions Banking Rule Reviewed With Respect to Alternate RACT Compliance Trading Plans?

No, the revised rule does not contain any reference to an alternate RACT compliance trading program. The purpose of the rule does not include alternate RACT trading plans, or for that matter, any emissions trading.

SIP emission reduction credits must be surplus at the time of use. A determination of whether the ERCs are surplus must be conducted by the State when they are to be used. The Chapter 6 regulation merely provides for stationary sources to identify and acquire ERCs. The NO_X control regulation in Chapter 22, on the other hand, refers to trading associated with RACT compliance. Under the provisions of the revised Chapter 22, the 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). The determination that an alternate RACT compliance trade consists of surplus emission reductions must be made at the time of the State and EPA's approval of the alternate RACT trading plan. Thus, through the State and EPA approval of a source-specific alternate RACT trading plan, the trade is appropriately reviewed, evaluated and verified as surplus at the time of use. Appropriately, the alternative RACT trading program is not contained in Chapter 6 and was not reviewed under this action. We are reviewing the alternate RACT trading plan program separately as a part of our review of Louisiana's revisions to its Chapter 22 NO_X regulations.

How Does the State's Revised Banking Regulation in Chapter 6 Interact With the NO_X Control Regulation in Chapter 22 and the NSR Regulation in Chapter 5?

The State has recently revised the NO_X control regulation in Chapter 22. This NO_X RACT rule requires stationary sources to comply with a more strict emission limitation during the five month ozone season. Typically a stationary source reduces emissions below the baseline to generate surplus emission reduction credits. Due to the revised NO_X rule, the allowable emission limitation for a stationary source could potentially have two values, one for the five month ozone season and another for the seven month non-ozone season.

Thus, the baseline emissions for the stationary source, which are used to determine surplus emission reduction

credits for offset permitting purposes, could have two different values. In order to accurately determine the surplus ERCs to be used in the NNSR permitting, the baseline emissions and surplus ERCs must be determined for the two time periods. Section 173 of the Act does not address the use of offsets for nonattainment permitting over periods of less than one year. Accordingly, the verification of NO_X ERCs to be used in all NNSR permitting under Chapter 5 must be determined by adding the ERCs from the five-month ozone season and the seven-month non-ozone season.

With respect to all offsets under Chapter 5 and all ERCs under Chapter 6, the total NO_X emission increases during the ozone season must be offset by NO_X ERCs from the ozone season. Non-ozone season NO_X increases may be met by either ozone or non-ozone NO_X ERCs. The annual NO_X increase must be offset by the total combination of ozone and non-ozone season surplus NO_X emission reduction credits.

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 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. The State has indicated by letter from Mr. Dale Givens to EPA dated May 3, 2002, that the State would operate the emissions reduction bank in such a manner. EPA requests 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 emission reduction credits resulting from the split emission limitations for the NO_X RACT rule in Chapter 22.

The inter-precursor trading provisions contained in the Chapter 5 NNSR rules indicate that offsets of VOC emissions may be met by surplus NO_X emission reductions. The VOC emission offsets met by surplus NO_X ERCs must be for both the ozone season and non-ozone seasons. In other words, for inter-precursor trading the VOC emission increases during the ozone season must be offset by NO_X ERCs from the ozone season. Non-ozone season VOC increases may be offset by either ozone or non-ozone NO_X ERCs. The annual VOC increase must be offset by the total combination of ozone and non-ozone season surplus NO_X emission reduction credits.

Does the Revised State Emissions Banking Rule Meet the Requirements of the Clean Air Act and 40 CFR Part 51 Regulations Pertaining to NSR Requirements?

We did not approve the previous LDEQ Chapter 6 emission reduction credit banking regulation as an EIP. The stated purpose of the 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. The potential offsets are required by the revised rule to demonstrate that they are ''Surplus When Used'' as offsets in the NNSR permit application. In spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, the revised rule does not function as an ERC bank. Rather, the revised rule functions as merely 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 emission reduction credits that may be used for NNSR inter-precursor trading or alternate RACT compliance trading. Therefore, we are proposing action on the revised Chapter 6 rule after review for compliance with the Act with respect to NNSR purposes only, and not as an EIP.

We have concluded that having a bulletin board such as that established by the revised Chapter 6 rule is consistent with section 172 of the Act, which specifically indicates that economic incentive measures such as fees, marketable permits and auctions of emission rights may be used as SIP provisions. It is also consistent with the 40 CFR part 51 regulations pertaining to NSR permitting.

The operation of the bulletin board as revised in Chapter 6 is also consistent with section 173 of the Act, which provides that the owner or operator of a new or modified major stationary source may comply with any offset requirement of the Act for increased emissions only by obtaining emission reductions from the same source or other sources in the same nonattainment area. By determining the surplus ERCs according to the requirements of section 607 of the revised rule, the requirements of section 173 of the Act—namely, that emission reduction offsets must be, by the time a new or modified source commences operation, in effect and enforceable—will be satisfied.

The determination of surplus ERCs under section 607 is consistent with the Act. It is consistent with 40 CFR part 51 regulations pertaining to NSR requirements. All ERCs sought to be used for inter-precursor trading, including those identified and acquired through the Chapter 6 bank, must be accompanied by a section 607 surplus determination at the time of the permit application submission for the inter-precursor trade. The State will re-evaluate during the NSR process whether these ERCs are surplus at use.

We concluded that the section 607 ''universal growth'' approach to determining baseline emissions for the purpose of calculating surplus emission reductions is consistent with the Act and 40 CFR part 51 regulations pertaining to NSR requirements. This procedure is discussed above in part II, under the heading ''Under the revised State banking regulation, how will ''baseline emissions'' be calculated?'

In general, baseline emissions are set at the lower of allowable emissions or actual emissions at the source. See EIP Guidance at 39–42. (As noted previously, the EIP Guidance is not directly applicable to the revised Louisiana rule, but it represents EPA's final action on the Open-Market Trading Rule (OMTR) (proposed in August 3, 1995 at 60 FR 39668, and on August 25, 1995 at 60 FR 44290), and therefore its discussion of the baseline for determining surplus emission reductions is relevant here.) Under the revised Chapter 6 rule, ''baseline emissions'' are defined in section 605, and are calculated as described in section 607(C). As described previously, the revised Louisiana rule requires the comparison of two different inventories—the ''base line'' and ''base case'' inventories—in calculating the baseline emissions. The LDEQ has agreed in implementing this rule that it will interpret section 607(C)(1) to require use of the base line inventory beginning November 15, 2005. See letter from Dale Givens, Secretary of LDEQ, to Gregg Cooke, Regional Administrator, EPA Region 6 (May 3, 2002). Using the base case inventory until that date is appropriate as a transition measure during the implementation of the controls necessary for attainment. Accordingly, we have concluded that the use of a universal growth factor to evaluate the actual emissions relied upon in the most recent attainment demonstration is consistent with the Act and 40 CFR part 51 regulations pertaining to NSR permitting.

V. Proposed Action

For the reasons stated herein, we have determined that the SIP submittal for a revision to LAC 33:III Chapter 6 is consistent with Title I of the Act and federal regulations pertaining to NNSR permitting as found at 40 CFR part 51. Sections III and IV of this preamble and the Technical Support Document for this proposed action contain reviews of the State submittal and the basis for our proposal to approve of these Sections.

VI. Request for Public Comments

We are requesting comments on all aspects of the requested SIP revision and our proposed rulemaking action. Comments received by the date indicated above will be considered in the development of the EPA's final rule.

VII. 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 proposes to approve 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).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action merely proposes to approve 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 ''Protection of Children from Environmental Health Risks and Safety Risks'' (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. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 15, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–18575 Filed 7–22–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–61–3–7565; FRL–7250–4]

Approval of Revisions to the Louisiana Department of Environmental Quality Title 33 Environmental Quality Part III. Air Chapter 5. Permit Procedures, 504. Nonattainment New Source Review Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the EPA is proposing to approve revisions to the State of Louisiana's State Implementation Plan (SIP). The revisions concern the nonattainment New Source Review (NSR) procedures for the five-parish Baton Rouge ozone nonattainment area (hereinafter referred to as the Baton Rouge area). The revisions include increases to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in nonattainment areas. The minimum offset ratios were increased for classifications of serious and severe ozone nonattainment. The revisions will also allow an increase in volatile organic compound (VOC) emissions to be offset by a decrease in emissions of nitrogen oxides (NO_X) if the net result is a decrease in ozone levels. The revisions require that if NO_X emissions decreases are used for VOC emissions increases, the permit for which the offsets are required must have been issued on or before November 15, 2005 and meet additional requirements to ensure a net air quality benefit.

Major stationary sources that plan to build or modify in a nonattainment area must obtain these emissions offsets as a condition of permit approval. Emissions offsets are reductions in actual emissions from existing sources in the vicinity of the proposed new source. The EPA proposes to approve the use of these revisions as a component of the Louisiana plan to bring the Baton Rouge nonattainment area into compliance with the Clean Air Act (CAA or the Act).

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

ADDRESSES: Written comments should be sent to:

David Neleigh, Chief, Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

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

FOR FURTHER INFORMATION CONTACT: Ms. Laura Stankosky, Air Permits Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7525.