2002, agreeing to extend the MOU effective September 29, 2002. Accordingly, Customs is amending § 12.104g(a) to reflect the extension of the import restrictions.

The List of Designated Archaeological Material from Guatemala describing the materials covered by these import restrictions is set forth in T.D. 97–81. The list and accompanying image database may also be found at the following internet Web site address: *http://exchanges.state.gov/culprop*.

The restrictions on the importation of these archaeological materials from Guatemala are to continue in effect for five years from September 29, 2002. Importation of these materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document extends import restrictions already imposed on the above-listed cultural property of Guatemala by the terms of a bilateral agreement entered into in furtherance of a foreign affairs function of the United States, pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(1)), notice of proposed rule-making, public procedure, and a delayed effective date are not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in Executive Order 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspections, Imports.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citations for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

2. In § 12.104g(a), the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Guatemala by adding ''extended by T.D. 02–56'' immediately after ''T.D. 97–81'' in the column headed ''T.D. No.''.

Robert C. Bonner,

Commissioner of Customs.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–24895 Filed 9–26–02; 12:54 pm]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–61–3–7565a; FRL–7384–7]

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: Final rule.

SUMMARY: The EPA is approving 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. 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 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 must 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 proposed approval of these SIP revisions on July 23, 2002 (67 FR 48090). The EPA approves 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). 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 30, 2002.

ADDRESSES: Copies of documents relevant to this action 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 Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Stankosky of the EPA Region 6 Air Permits Section at (214) 665–7525.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us,'' or ''our'' is used, we mean the EPA. Throughout this document, whenever ''Baton Rouge Area'' or ''Baton Rouge Ozone Nonattainment Area'' is used, we mean the area which includes the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge in the State of Louisiana. See 40 CFR 81.319.

I. What Action Is the EPA Taking?
II. Why Is This Action Necessary?
III. What Does This Action Do?
IV. Whom Does This Action Affect?
V. 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?
VI. What Comments Were Received on the Proposed Nonattainment NSR Rule, and How Has the EPA Responded?

VII. What Is the Scope of the EPA's Final Action?
VIII. Administrative Requirements

I. What Action Is the EPA Taking?

The EPA is approving changes to the State of Louisiana's nonattainment NSR procedures for the five-parish Baton Rouge ozone nonattainment area. These revisions to the nonattainment NSR procedures are part of the changes the state is making to the SIP to address the CAA pollution control requirements for ozone nonattainment areas. These changes revise the Louisiana Administrative Code (LAC) at Part III, Section 504, which was previously approved by the EPA on May 31, 2001 (66 FR 29491). NSR is a permitting program that regulates the construction of new major stationary sources of air pollution and major modifications to existing major sources. These sources are required by the CAA to obtain an air pollution permit before beginning construction.

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 VOC emissions to be offset by a decrease in emissions of NO_X. Further, 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.

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.

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. Why Is This Action Necessary?

The Baton Rouge area has been classified as a serious ozone nonattainment area (40 CFR 81.319). We received the Louisiana rule that we are approving in this final 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 Louisiana Department of Environmental Quality (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 National Ambient Air Quality Standard (NAAQS). One component of the Attainment Plan/Transport SIP is the revised nonattainment NSR rule that has been enacted at LAC 33:III.504. This action is necessary to take final action on the revised rule as an approvable component of the Attainment Plan/Transport SIP.

III. What Does This Action Do?

In this action, we are approving revisions to the Louisiana SIP that have been enacted at LAC 33:III.504, which contains the rules for NSR procedures that apply to nonattainment areas designated pursuant to Section 107 of the CAA. The LAC revisions include increases to the minimum offset ratios for new major stationary sources and major modifications to major stationary sources in the Baton Rouge area. The revisions also add minimum offset ratios for NO_X. For a nonattainment area with a classification of serious for ozone, the new minimum offset ratio for VOCs and for NO_X is 1.20 to 1 if Lowest Achievable Emission Rate (LAER) technology is implemented, or 1.40 to 1 using internal offsets if LAER is not used. For a nonattainment area classified severe for ozone, the new minimum offset ratio for VOCs and for NO_X is 1.30 to 1 with LAER, or 1.50 to 1 using internal offsets without LAER. As defined by section 171 of the CAA, the term LAER refers to either the most stringent emission limit contained in the state plan of any state for the applicable category of sources, or the most stringent emission limitation achieved in practice within an industrial category.

The revisions also allow an increase in VOC emissions to be offset by a decrease in emissions of NO_X. The EPA defines this type of ''offset,'' the trading of emission reductions of one pollutant's precursors for emission reductions of a different precursor for that pollutant, as inter-precursor trading (IPT). See ''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R–01–011 (EPA Office of Air and Radiation, January 2001) (hereinafter, the EIP Guidance). Under the revised rule, 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 of NO_X and VOC decreases. If NO_X decreases are used for VOC increases, the permit for which the offsets are required shall have been issued on or before November 15, 2005. The LDEQ has identified November 15, 2005, as a ''sunset date'' after which no permits will be issued or modified allowing NO_X credits to offset VOC increases. Revisions to the required offset credit ratio are listed in Table 1.

TABLE 1.—MINIMUM OFFSET RATIOS FOR NEW AND MODIFIED MAJOR STATIONARY SOURCES IN OZONE NONATTAINMENT AREAS

[Major Stationary Source/Major Modification Threshold for Emissions of VOC or NO_X]

Ozone non-attainment status of area	Major stationary source threshold values (tons/year)	Major modification significant Net increase (tons/year)	Offset ratio minimum
Marginal [1]	100	40 (40) [2]	1.10 to 1
Moderate	100	40 (40) [2]	1.15 to 1
Serious	50	25 [3] (5) [4]	1.20 to 1 w/ LAER or 1.4 to 1 internal w/o LAER.
Severe	25	25 [3] (5) [4]	1.30 to 1 w/ LAER or 1.5 to 1 internal w/o LAER.

[1] For those parishes which are designated incomplete data or transitional nonattainment for ozone, the New Source Review rules for a marginal classification apply.

[2] Consideration of the net emissions increase will be triggered for any project which would increase emissions by 40 tons or more per year, without regard to any project decreases.

[3] For serious and severe ozone nonattainment areas, the increase in emissions of VOC or NO_X resulting from any physical change or change in the method of operation of a stationary source shall be considered significant for purposes of determining the applicability of permit requirements, if the net emissions increase from the source equals or exceeds 25 tons per year of VOC or NO_X.

[4] Consideration of the net emissions increase will be triggered for any project that would increase VOC or NO_X emissions by five tons or more per year, without regard to any project decreases, or for any project that would result in a 25 ton or more per year cumulative increase in emissions of VOC within the contemporaneous period or of NO_X for a period of five years after the effective date of the rescission of the NO_X waiver, and within the contemporaneous period thereafter.

The Attainment Plan/Transport SIP submitted by Louisiana includes an enforceable commitment to perform and submit a mid-course review by May 1, 2004. This mid-course review would include, among other things, a re-evaluation of the ratio of NO_X to VOC emissions reductions needed for attainment.

IV. Whom Does This Action Affect?

This action applies to the construction of any new major stationary source or to any major modification at a major stationary source within the Baton Rouge area. Section 182 of the CAA defines ''major source'' with respect to each category of ozone nonattainment classification area, as shown in Table 2. Any source that emits or has the potential to emit 50 tons or more of VOC or NO_X and is located in an area classified as serious is considered a major source. Any source that emits or has the potential to emit 25 tons or more of VOC or NO_X and is in an area classified as severe is considered a major source.

TABLE 2.—DEFINITIONS OF MAJOR STATIONARY SOURCES

Attainment status of area where source is located	Potential to emit (tons/year)	
	Nitrogen oxides (NO_X)	Volatile organic compounds (VOC)
Attainment Areas	100	100
Nonattainment Areas:		
Marginal	100	100
Moderate	100	100
Serious	50	50
Severe	25	25
Extreme	10	10

The requirements of the revised rule do not apply to NO_X increases for any applications deemed administratively complete before December 20, 2001. Additionally, under the revised rule the 1.40 to 1 VOC internal offset ratio (without LAER) for serious ozone nonattainment areas shall not apply to such applications. Instead, a 1.30 to 1 internal offset ratio shall apply to VOC if LAER is not utilized. (With LAER, the applicable ratio is 1.20 to 1, regardless of application date.) Further, sources exempt from nonattainment NSR requirements for NO_X increases will still be subject to the construction schedule and other provisions of the EPA's Supplemental Transitional Guidance. See memorandum from John Seitz, ''New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements'' (September 3, 1992).

V. 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?

The State has recently promulgated and revised the NO_X control regulation in Chapter 22. This NO_X Reasonably Available Control Technology (RACT) rule requires stationary sources to comply with a more strict emission limitation during the State's 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. For more information about the area's ozone seasons, see LAC III:33 Chapter 22, and the separate EPA rule-making to be issued regarding that chapter.

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 emission reduction credits (ERCs) to be used in the nonattainment NSR permitting, the baseline emissions and surplus ERCs must be determined for the two time periods. The NO_X ERCs for any annual time period will consist of the ERCs for the five month ozone season and the ERCs from the seven month non-ozone season. Offset requirements for new sources derive from Section 173(a)(1)(A) of the Act, which concerns ''total'' emissions and does not address the use of emission offsets for nonattainment permitting over periods of less than one year. Therefore, the NO_X ERCs to be used in all nonattainment NSR permitting under Chapter 5 must be determined by adding the ERCs from the ozone season and the 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 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 nonattainment 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.

The emission offset provisions contained in the Chapter 5 nonattainment NSR rules indicate that until November 15, 2005, offsets of VOC emissions may be met by surplus NO_X emission reductions. If a VOC emission offset requirement is met by surplus NO_X emission reductions, the reductions must be for an annual period (both the ozone season and non-ozone season). VOC emission increases during the ozone season must be offset by NO_X emission reductions from the same ozone season. Non-ozone season VOC increases may be met by either ozone or non-ozone NO_X ERCs (and/or by VOC ERGs). The annual VOC increase must be offset by the annual (total combination ozone and non-ozone season) surplus NO_X ERCs (and VOC ERCs).

VI. What Comments Were Received on the Proposed Nonattainment NSR Rule, and How Has the EPA Responded?

We received written comments on the proposed rulemaking from seven parties during the public notice period that closed on August 22, 2002. The comments of four of the parties, the Steering Committee of the Baton Rouge Ozone Task Force, Louisiana Mid-Continent Oil and Gas Association, Louisiana Chemical Association, and the Leadership Team of the Baton Rouge Clean Air Coalition, support our July 23, 2002 proposed approval of the nonattainment NSR regulation. The LDEQ strongly supports the proposed EPA approval and supplied three wording clarifications. Louisiana Generating LLC and the Tulane Environmental Law Clinic (TELC) on behalf of the Louisiana Environmental Action Network (LEAN) submitted comments opposing the approval of the nonattainment NSR rule.

Comment 1: Four commenters supported approval of the nonattainment NSR rule.

Response 1: The EPA agrees. We have determined that these changes to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in the Baton Rouge Area are approvable. The revisions that allow an increase in VOC emissions to be offset by a decrease in emissions of NO_X are also approvable.

Comment 2: The LDEQ noted that the offset ratio for moderate nonattainment areas in Section III, Table I: Minimum Offset Ratios for New and Modified Major Stationary Sources, should be 1.15 to 1, not 1.10 to 1.

Response 2: We agree, and have corrected Table I in this final rule to reflect the correct offset ratio for moderate nonattainment areas. For additional clarity we have also added the footnotes contained in the LDEQ nonattainment NSR rule, Minimum Offset Ratios table to our Table 1 in this action.

Comment 3: The LDEQ questions the inclusion of the reference to the memoranda from John Seitz, dated March 11, 1991, ''New Source Review (NSR) Program Transitional Guidance,'' and September 3, 1992, ''New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements.'' The commenter notes that since Louisiana has a program that complies with all Part D NSR provisions of the CAA amendments of 1990, as approved by the EPA on October 10, 1997 (62 FR 52951) and revisions to the section on January 5, 1999 (64 FR 415 and May 31, 2001 (66 FR 29491), the EPA ''Transitional Guidance'' documents would not be relevant.

Response 3: The EPA agrees that Louisiana has a program that complies with all Part D NSR provisions of the CAA amendments of 1990. The relevance of the Seitz memoranda arises from the statement in the 1992 Transitional Guidance that ''for purposes of determining the approvability of revised NSR SIP's,'' sources with applications complete before the date in question will be covered by the NSR rules in effect as of the application, provided certain conditions are met. See Supplemental Transitional Guidance, p. 2. (The March 11, 1991, Seitz Transitional Guidance memorandum is relevant to this rule only as it informs the 1992 memorandum; accordingly, we have removed it from the discussion in Part IV, above.) We included this provision to apply to applications deemed administratively complete prior to the December 20, 2001, promulgation of the LDEQ's nonattainment NSR rule. Sources that submitted complete permit applications prior to the promulgation date of the new NSR permit requirements may receive final permits

under the previous State NSR rules, provided that the following conditions are met: (1) The State and the source move expeditiously towards final permit issuance; (2) construction begins no later than 18 months from the date of permit issuance unless an earlier time is required under the applicable SIP; (3) construction is not discontinued for a period of 18 months or more; and (4) construction is completed within a reasonable time. States may not grant permit extensions beyond these time periods unless the permittee is required in a federally-enforceable manner to meet the new Part D NSR provisions.

Comment 4: The LDEQ requests that a statement in Section VIII (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?) be changed from ''The State has recently revised the NO_X control regulation in Chapter 22.'' to read: ''The State has recently promulgated and revised the NO_X control regulation in Chapter 22.''

Response 4: The EPA agrees and so notes this comment.

Comment 5: The TELC requested an extension to the public comment period of 30 days.

Response 5: 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 6: The TELC has concerns with the emission reductions generated by facilities which are required to comply with NO_X emission Reasonably Available Control Technology (RACT) requirements in Louisiana's revised NO_X rule, which EPA proposed to approve on July 23, 2002 (67 FR 48095). The commenter is concerned that facilities which elect to implement RACT before the compliance date required by the rule, May 1, 2005, could be considered to be doing so voluntarily. And as voluntary reductions, *i.e.*, not required by federal or state law, these NO_X reductions could be deemed surplus, and therefore, eligible for use as emission offsets, including offsets of VOCs.

Response 6: 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 7: The TELC is concerned that facilities will now be able to install LAER technology to control NO_X emissions, ''count the NO_X reductions as surplus, and use them to offset new increases in VOCs so that those new modifications can . . . escape New Source Review.'' The commenter is further concerned that this procedure will allow industry to emit greater quantities of VOCs into the air than currently allowed, with harmful effects on the Baton Rouge area.

Response 7: The EPA agrees that sources that were not required to meet nonattainment NSR for new NO_X sources during the NO_X waiver would now be able to install LAER technology and count the reductions (from the level set by the new NO_X RACT rule) as surplus and available for use as emissions offsets for a current new source. Such current new major stationary sources and major modifications at major stationary sources in the Baton Rouge area would be required to obtain emissions offsets at the ratios specified in Table 1 of this rulemaking. Under the CAA and the revised Louisiana rule, however, emissions offsets do not serve to allow a facility to avoid new source review. Instead, a facility that will exceed the emission thresholds in the relevant attainment category (see Table 1) must obtain offsets as a condition of receiving a new source review permit. The generation and use of such emissions credits must be consistent with the definition of ''Surplus Emission Reductions'' in LAC 33:III.605. The LDEQ's nonattainment NSR procedures also require that emission reductions claimed as offset credit shall be sufficient to ensure ''Reasonable Further Progress'' toward attainment, that emission offsets provide a net air quality benefit, and that the offsets must be federally enforceable, before commencement of construction of the proposed new source or major modification. Offsets thus are a vital part of the mechanism that ensures that new projects and modifications will not harm the attainment status of the area in question.

The effect of each of the above scenarios would be a reduction in overall emissions for the Baton Rouge area, because the new sources would have to seek minimum offsets in excess of what the new source is expected to release as emissions.

Finally, the commenter may have intended, with the reference to offsets used to avoid NSR, to refer to the ''netting'' analysis conducted under Part 504(A)(4) of the proposed rule. In this analysis, the net emissions increase from the construction of a new major stationary source or any major modification at a stationary source is compared to the values in Table 1 to determine whether a new source review must be performed. The inter-precursor trading provision of the revised rule, however, applies only to the use of emission offsets, not to the netting analysis. See LAC 33:III.504.G. (definition of major modification, providing that ''VOC and NO_X emissions shall not be aggregated for the purpose of determining significant net emissions increase.''). LDEQ has confirmed to the EPA that this interpretation of the rule is correct. Accordingly, the potential harm the commenter cites—*i.e.*, the use of NO_X emission reductions to avoid new source review for new VOC emissions—cannot occur as a result of the revised rule.

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

Comment 8: The TELC charges that LDEQ has taken inconsistent positions regarding modeling and the effects of NO_X reduction on attainment of the ozone NAAQS. The commenter points out that on January 26, 1996 (61 FR 2438), the EPA granted an exemption from the RACT and NSR requirements for major stationary sources of NO_X, pursuant to section 182(f) of the CAA. This exemption was based on modeling submitted by LDEQ in a 1994 petition that demonstrated that additional NO_X emission controls within the Baton Rouge area will not contribute to attainment of the ozone NAAQS for the area. On May 7, 2002 (67 FR 30638), the EPA rescinded that exemption based on more recent modeling conducted for the Baton Rouge area, submitted by LDEQ September 24, 2001, that indicates that control of NO_X sources will help the area attain the ozone NAAQS. According to the commenter, this change in approach to NO_X regulation has the effect of creating ''loopholes in the law.''

Response 8: The ''loopholes'' that the commenter complains of are addressed elsewhere in this document (see comments and responses 6 and 7). This response addresses only the commenter's apparent assertion that Louisiana's scientific approach to NO_X regulation is unfounded. The EPA disagrees with this argument. In granting the NO_X exemptions January 26, 1996 (61 FR 2438), the EPA reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emission controls. Photochemical grid modeling recently conducted for the Baton Rouge area SIP indicates control of NO_X sources will help the area attain the ozone NAAQS. The State of Louisiana therefore requested that the EPA rescind the NO_X exemption based on this new modeling on September 24, 2001. In our proposed approval of the rescission of the NO_X waiver May 7, 2002 (67 FR 30638), we stated that we believed that the State had adequately demonstrated that additional NO_X reductions would contribute to attainment of ozone NAAQS. The State of Louisiana is not the only state that has requested that the EPA rescind its NO_X waiver based on updated photochemical grid modeling information. Seven years elapsed between the LDEQ's previous modeling demonstration that additional NO_X reductions would not contribute to area attainment, and the most recent modeling events demonstrating the Baton Rouge area to be NO_X limited. Pollution control technology, including air modeling, is a dynamic and evolving field. The model used by LDEQ to support its request for approval of the NO_X waiver was Urban Airshed Model (UAM) IV, which is an EPA-approved photochemical grid model. The model used by LDEQ to support its request for rescission of the NO_X waiver was UAM V. This represents a significant refinement in modeling technology. Additionally, emission inventory tools have been improved during this seven year period from when the State initially requested the NO_X waiver.

Comment 9: The TELC states that ''inter-pollutant trading,'' eliminated from the revised emission reduction credits banking rule, and ''inter-precursor trading,'' allowed by the revised nonattainment NSR rule, refer to the same concept.

Response 9: In this rulemaking, the EPA does not intend that ''inter-pollutant trading'' and ''inter-precursor trading'' refer to the same concept. ''Inter-pollutant trading'' refers to the trading of NAAQS criteria pollutants, *i.e.*, carbon monoxide, sulphur dioxides, particulate matter (less than 10 microns in diameter), and ozone. ''Inter-precursor trading'' refers to the trading of precursor components of a NAAQS pollutant—in this case ozone, with precursors being VOCs and NO_X.

Comment 10: The TELC states that the provisions in the revised nonattainment NSR rule allowing IPT are illegal. The commenter disagrees with the EPA's position on IPT in our proposed nonattainment NSR notice. The commenter cites several provisions as follows to support their assertion.

(1) The commenter states that section 173(c)(1) of the CAA requires that new or modified stationary sources offset emission increases of a given pollutant with reduction of the same pollutant. In addition, the commenter states that ''the substitution mentioned in [CAA Section] 182(c)(2)(C) does not refer to substituting emission reductions of one precursor for another, but to substituting one control plan for another. Even then states can only substitute in accordance with EPA guidance required by that section.''

(2) The commenter references the NO_X Substitution Guidance (EPA, December 1993), stating that it makes no mention of allowing inter-precursor trading.

(3) The commenter notes that the EIP Guidance, used a basis for the EPA's proposed approval of the nonattainment NSR rule, is not the guidance Congress required in section 183 of the CAA.

(4) The commenter quotes from the February 2, 2000 (65 FR 4887), final rulemaking on the California SIP revision for the El Dorado County Air Pollution Control District, stating, ''As recently as February 2, 2000, EPA recognized that ''the CAA doesn't explicitly authorize inter-precursor,'' and that ''a strict interpretation of the Act would prohibit air districts from allowing this practice at all in NSR rules.''

Response 10: We disagree. The inter-precursor trading provision in the nonattainment NSR rule, which allows an increase in VOC emissions to be offset by a decrease in emissions of NO_X, is approvable.

CAA Section 173(c)(1)—The EPA agrees that section 173(c)(1) is silent on the concept of inter-precursor trading (IPT). Nonetheless, while we do not have specific requirements for IPT that apply to all circumstances, we have recognized that IPT can be allowed under limited circumstances. Our position on IPT can be found at Appendix 16.9 in the EIP guidance. An economic incentive program (EIP) is a regulatory program that achieves an air quality objective by providing market-based incentives or information to emission sources. For example, 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. An EIP empowers sources to find the means that are most suitable and most cost-effective for their particular circumstances, by providing flexibility in how sources meet an emission reduction target.

CAA Section 182(c)(2)(B)—The relevance of Section 182(c)(2)(C) of the CAA is its recognition that both VOCs and NO_X emissions combine in the atmosphere to create ozone, and that a reduction in the levels of NO_X as well as VOCs can lower ozone levels more effectively than a reduction in the levels of VOCs alone under Section 182(c)(2)(B). Although Section 182(c)(2)(C) is silent on the concept of IPT, it does allow a combination of NO_X emission reductions for VOC emission reductions, stating that the resulting reduction ''in ozone concentrations'' must be ''at least equivalent'' to that which would result from 3% VOC reductions required as a demonstration of Reasonable Further Progress (RFP) under Section 182(c)(2)(B). This 3% requirement can be lessened if the SIP includes the measures that are achieved

in practice by sources in the same source category in nonattainment areas of the next higher ozone classification area. The LDEQ rule does satisfy this provision, as it requires new stationary sources to obtain emission offsets at the next higher ozone classification ratio.

NO_X Substitution Guidance—While we agree that the NO_X Substitution Guidance (EPA, December 1993) is also silent on the issue of IPT, it does provide that the RFP reductions should be consistent with those needed for attainment. Further, it provides that the Attainment and RFP Plans should show that reductions of NO_X consistent with those needed for attainment can be accepted as equivalent to what would be required for a VOC-only attainment. The LDEQ's current nonattainment NSR procedures also require that emission reduction claimed as offset credit shall be sufficient to ensure RFP toward attainment.

EIP Guidance—Because this revision to the nonattainment NSR rule is not itself a market-based program for achieving air quality improvements (and is therefore not an EIP as defined by the EPA), we did not evaluate LAC 33:III.504 as a whole with respect to Appendix 16.9 of the EIP Guidance. However, because the IPT guidance provided in the EIP document applies generally to NSR offsets, we did consider the LDEQ rule in light of the IPT provisions in the EIP Guidance, and determined that the rule is consistent with those provisions. In particular, Appendix 16.9 of the EIP Guidance requires that a suitable EIP inter-precursor trade must either reduce emissions or not increase emissions, and outlines six criteria for showing that IPT is appropriate. (Alternatively, instead of using these six criteria, it is permissible to conduct air quality modeling for individual ozone inter-precursor trades to demonstrate that anticipated trades will either reduce emissions or not increase emissions.)

The IPT conditions in the LDEQ rule are consistent with the criteria in the EIP Guidance: (1) The LDEQ has conducted an approvable attainment demonstration meeting the requirements of Section 110 of the CAA; (2) the technical justification for use of IPT is consistent with the approvable attainment demonstration; (3) the geographic area is restricted to the Baton Rouge area; (4) IPT is compliant with hazardous air pollutant requirements as discussed in Response 11; (5) sources are required to offset an increase in VOC emissions with a greater amount of NO_X emissions; and (6) trades will not be approved where there will not be progress toward ozone attainment. The attainment demonstration modeling also supports the use of the ratio required by the LDEQ's rule and demonstrates that any emission offset allowed by the rule will have no adverse effect. Further, the Attainment Plan/Transport SIP includes an enforceable commitment to perform and submit a mid-course review by May 1, 2004. This mid-course review would include, among other things, a re-evaluation of the ratio of NO_X to VOC emissions reductions needed for attainment.

The EPA does agree that the EIP guidance is not the guidance Congress required in section 183 of the CAA. It is the guidance for implementation of sections 182(g)(4)(A), 187(d), and 187(g) of the CAA. The guidance required in section 183 of the Act is the NO_X Substitution Guidance (EPA, December 1993), which is discussed above.

Final Rulemaking on the California SIP Revision for the El Dorado County Air Pollution Control District—IPT has received limited proposed approval from the EPA in the State of New Hampshire (66 FR 9278). It has also received limited approval in several air quality districts in California (Bay Area, 65 FR 56284; El Dorado, 65 FR 4887; Sacramento Metropolitan area; San Diego County, 64 FR 42892; San Joaquin Valley, 65 FR 58252), and is being considered for two more (the South Coast area, and the Mojave Desert area). The commenter quotes from the **Federal Register** notice for the final rulemaking on the California SIP revision for the El Dorado County Air Pollution Control District (February 2, 2000 (65 FR 4887)) in support of the argument that the CAA does not explicitly allow IPT. The EPA agrees that the cited **Federal Register** notice contains the language quoted by the commenter. It is helpful, however, to include the context of the statement: ''Section 173(c)(1) of the CAA requires that new or modified stationary sources offset emission increases of a given pollutant with reductions of the same pollutant. Since the CAA doesn't explicitly authorize interprecursor trading, a strict interpretation of the Act would prohibit air districts from allowing this practice at all in NSR rules. Recent EPA policy has allowed interprecursor trading, particularly among ozone precursors in ozone nonattainment areas, if certain criteria are met. Consistent with this policy, the District has two possible ways to address this limited disapproval issue when it revises Rule 523. One way is to include rule language requiring written EPA concurrence for each proposed interprecursor trade. Alternatively, the District could produce a technical justification for various interprecursor offset ratios, and then revise Rule 523 to include those ratios. In this scenario, rule language requiring case-by-case EPA concurrence would not be necessary. Since the CAA does not explicitly authorize interprecursor trading, EPA's policy is to require Agency concurrence for such trades, either on a case-by-case or one time only basis if appropriate ratios are established by rule. With respect to the amount of time required for EPA to concur on a specific trade in the case-by-case scenario, EPA would have to make its determination during the comment period provided for the draft permit. This would not delay the permit issuance process.''

The February 2, 2000, response thus notes two possible ways to address the approval of IPT: (1) Requiring written EPA concurrence for each proposed IPT case; and (2) produce a technical justification for various IPT ratios and revise the rule to include those ratios. Here, the state has included ratios in their revised nonattainment NSR rule and has submitted the technical justification for use of those ratios to us.

For the above reasons, EPA finds that the use of IPT in the revised Louisiana rule is approvable.

Comment 11: The TELC is concerned that approval of the use of IPT will overburden African American communities along the Baton Rouge corridor. The increase in VOC emissions from reductions in NO_X would have severe and disparate impact on minority communities living close to fenceline of industries involved in such trades. The commenter states that many VOCs are also considered hazardous air pollutants (HAP). The commenter cites as basis that Appendix 16.9 of the EIP Guidance requires trades that involve VOCs to comply with the HAP framework in section 16.2 of the EIP Guidance. The commenter is also concerned that public must have sufficient access to information to ensure a meaningful opportunity for public review and participation.

Response 11: EPA believes the revised NSR rule will improve air quality for all of the Baton Rouge area. We do not agree that the use of IPT will overburden African American communities along the Baton Rouge corridor. The Attainment Plan/Transport SIP revisions change only specific portions of the LDEQ regulations. The current regulations found at LAC 33:III.504 continue to require that emission offsets provide a net air quality benefit, and that the offsets must be federally enforceable before commencement of construction of the proposed new source or major

modification. The emission offsets must meet all applicable state requirements, any applicable new source performance standard in 40 CFR part 60, and any national emission standard for HAPs in 40 CFR part 61 or part 63.

Additionally, Chapter 51 of the LAC outlines ambient toxic air standards. Toxic air pollutants (TAPs) are a group of state-regulated chemicals consisting mainly of volatile organic compounds. The majority of TAPs are also HAPs. Major sources of TAPs are regulated under LAC 33:III. Chapter 51, Louisiana's comprehensive toxic air pollutant emission control program. TAPs are categorized into three groups (Class I, II, or III) based on their relative toxicities. If emissions of a Class I or II TAP increase by an amount greater than its minimum emission rate, a *de minimis* level established for each TAP in LAC 33:III.5112, sources of such compounds require maximum achievable control technology (MACT). Additionally, the impact of all TAP emissions must be below their respective health-based ambient air standards, which are also set forth in Section 5112. In this way, any increase in HAP emissions will be minimized and therefore, any impact on minority communities living close to fenceline of industries involved in trades of VOC increase for NO_X reductions would also be minimized.

The effect of IPT in minority communities is most appropriately taken into account during the proceedings on a particular proposed NNSR permit. Under Section 173(a)(5) of the Act, an ''alternative sites'' analysis must be conducted for each NNSR permit, which requires consideration of, *inter alia,* the ''social costs'' of the construction or modification, *e.g.*, the disparate impact on minority communities. The Louisiana regulation implementing this requirement, LAC 33:III.504.D.7, contains the same requirement:

> As a condition for issuing a permit to construct a major stationary source or major modification in a nonattainment area, the public record must contain an analysis * * * of alternate sites, sizes, production processes, and environmental control techniques and demonstrate that the benefits of locating the source in a nonattainment area significantly outweigh the environmental and *social costs* imposed.

(Emphasis added.) We believe the disparate impacts alleged by TELC will be addressed in individual permit proceedings, at which time factual information regarding the scope of the impact and the affected community will be available. EPA is entitled to review each Title V permit, and thus can object even in the absence of a citizen petition. We are committed to ensuring through the permit review process, the states standard for TAPS, which we believe are protective of human health and the environment.

The EPA takes public participation in environmental protection issues very seriously. Regarding public participation, because any trade would be linked to a nonattainment new source review permit, public notice and the opportunity to request a public hearing on the proposed project would be mandatory. Further, the information in the LDEQ banking database, defined at LAC 33:III.605, will be available to the public upon request. We agree that access to information is a necessary prerequisite to meaningful public participation. We have discussed the records access issue with LDEQ. Under past practices, some citizens have had a problem finding all of the information regarding air permits. LDEQ has instituted new procedures intended to improve public access to records. We will continue to oversee the Louisiana Title V Operating Permit Program to ensure the revised public participation procedures are being effectively implemented according to the intent of the regulatory requirements, and will recommend further changes to the LDEQ if needed.

Comment 12: The TELC lists three points from the EPA's July 9, 2001, comments to LDEQ on the State's proposed nonattainment NSR revisions (Louisiana Register May 20, 2001). The commenter states that the rule does not adequately address these EPA comments to the state: (1) EPA noted that LDEQ had not provided the required technical basis, based on modeling of current emission sources, to support its NO_X/VOC trading plan. The modeling must demonstrate that the program will actually reduce ambient ozone. Modeling must establish a trading ratio. Nothing in the public record suggests that LDEQ has done any of the required modeling. (2) EPA required that there be an ''approvable and replicable procedure'' by which these trading ratios will be calculated in the future. LDEQ has not provided any such procedure. (3) EPA required that ''the program should make sure that any trading that occurs is consistent with the attainment demonstration.'' LDEQ has provided no procedures by which the consistency of trading with the attainment demonstration will be monitored, nor has it even committed to doing such monitoring. The commenter is concerned that the EPA proposed to approve the same regulation even though the rule was not revised to reflect any of its concerns.

Response 12: The EPA disagrees with these assertions. Extensive urban airshed modeling has been conducted in support of Louisiana's revised SIP. The UAM provides the technical basis to support NO_X emission credits used to offset VOC increases. The LDEQ conducted approximately 100 UAM V simulations to determine the emission control strategy direction, emission control strategy level, and emission control region required to demonstrate attainment. The UAM clearly demonstrated that NO_X reductions are more effective than VOC reductions at reducing ambient ozone concentrations in the Baton Rouge area. UAM sensitivity simulations indicate that a 30% ''across the board'' reduction in VOC emission yielded less that a 1 part per billion decrease in the ozone peak for the three ozone episodes modeled. Accordingly, a reduction in one ton of NO_X emissions was more beneficial than an equivalent reduction in VOC emissions. It was also for these reasons that VOC emission credits should not be allowed to offset NO_X increases. Even though an ozone attainment benefit was shown with a one ton increase in VOC emissions for a one ton offset of NO_X emissions, the LDEQ rule requires that the ratios specified in Table 1 (Section 504 of Chapter 5 of the State rule) be employed if NO_X emission credits are used to offset VOC increases.

We disagree that our comment in our July 9, 2001, letter to the LDEQ required that the State provide an approvable and replicable procedure by which these trading ratios will be calculated ''in the future.'' That is, the purpose of that comment was not to request procedures to calculate future trading ratios. Instead, our point was that Louisiana's proposed nonattainment NSR revisions did not make clear that the ratios in Table 1 would apply to IPT trades. The State's final rule published on December 20, 2001, did clarify that point. The urban airshed modeling conducted by the State does provide a basis for the use of the trading ratios in Table 1 for use in IPT trades and the modeling is approvable and replicable. However, the EPA does acknowledge that environmental conditions change over time and, therefore, periodic reevaluations are necessary to maintain compliance with the ozone NAAQS. The LDEQ also recognizes that over extended periods of time, the relative effectiveness of NO_X and VOC decreases at reducing ozone levels may change. It was for that reason that the state established November 15, 2005, as a ''sunset date'' after which no permits

will be issued or modified allowing NO_X credits to offset VOC increases. Further, the Attainment Plan/Transport SIP includes an enforceable commitment to perform and submit a mid-course review by May 1, 2004. This mid-course review would include, among other things, a re-evaluation of the ratio of NO_X to VOC emissions reductions needed for attainment.

The EPA also believes that IPT is consistent with the attainment demonstration. As noted above LDEQ conducted approximately 100 UAM V simulations to determine the emission control strategy direction, emission control strategy level, and emission control region required to demonstrate attainment. The UAM did demonstrate that NO_X reductions are currently more effective than VOC reductions at reducing ambient ozone concentrations in the Baton Rouge area. Additionally, an increase in VOC emissions offset by a decrease in emissions of NO_X should be analyzed for the extent of impact from each pollutant involved. The LDEQ has agreed in implementing this provision to evaluate such trades on a case-by-case basis. See letter from Dale Givens, Secretary of LDEQ to Gregg Cooke, Regional Administrator, U.S. EPA, Region 6 (May 3, 2002). Additionally, in response to a comment sent by us on the proposed SIP revisions, LDEQ confirmed that further Urban Airshed Modeling would be required on a case-by-case basis if new data or evidence comes to light that indicates a NO_X for VOC trade will not be beneficial to the environment.

Comment 13: 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 nonattainment NSR 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 13: We disagree. As noted in its plain language, Section 4.2.1 is not intended as new policy or guidance. We disagree with the commenter's interpretation that Section 4.2.1 of Louisiana's SIP imposes nonattainment rules in an attainment area. Section 4.2.1 provides the State's acknowledgment of the requirements of sections 110(j) and 165(a)(3) of the Act, which prohibit the permitting of emissions from the construction or operation of sources that will cause, or contribute to, air pollution in excess of any national ambient air quality standard in any air quality control region, or any other applicable emission standard or standard of performance under the Act. EPA has proposed approval of Louisiana's 1-hour ozone attainment demonstration SIP in a separate rulemaking, 67 FR 50391, (August 2, 2002), and will address LaGen's comment regarding the approvability of the SIP when we taken final action on that rulemaking.

The stated applicability of the LDEQ nonattainment NSR revised rule in section 504(A)is for the construction of any new major stationary source or to any major modification at a major stationary source, provided such source or modification will be located within a nonattainment area, so designated pursuant to section 107 of the CAA, and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment.

VII. What Is the Scope of the EPA's Final Action?

The EPA is approving changes to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in the Baton Rouge Area. These approved revisions also allow an increase in VOC emissions to be offset by a decrease in emissions of NO_X. These changes revise LAC 33:III.504, previously approved by the EPA on May 31, 2001 (66 FR 29491).

VIII. 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. 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. 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 29, 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, Ozone, Nitrogen oxides, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: September 20, 2002.

Larry 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 by revising the entry for Section 504 under chapter 5 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 5—Permit Procedures				
*	*	*	*	*
Section 504	Nonattainment New Source Review Procedures	Dec. 2001, LR 27:2225	Sept. 30, 2002 and [FR Cite].	
*	*	*	*	*

* * * * *

[FR Doc. 02–24637 Filed 9–27–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[OH153–1a; FRL–7386–9]

Approval and Promulgation of State Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a negative declaration submitted by the State of Ohio which indicates that the State does not need regulations covering existing Small Municipal Waste Combustors (MWC) units. Ohio submitted its negative declaration regarding this category of sources in a letter dated June 25, 2002. The declaration was based on a systematic search of the State's internal databases and follow-up discussions with local air offices, which resulted in the determination that there are no affected small MWC units in Ohio.

DATES: This direct final rule is effective on November 29, 2002, without further notice unless EPA receives adverse written comments by October 30, 2002. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the negative declaration is available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone John Paskevicz at (312) 886–6084 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886–6084.

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

Table of Contents

I. What is the background for this action?
II. Negative declarations and their justification.
III. EPA review of Ohio's negative declaration.
IV. Administrative Requirements

I. What Is the Background for This Action?

On December 6, 2000, the EPA finalized a rule for small MWC units. EPA promulgated this rule based on sections 111(d) and 129 of the Clean Air Act (Act) Amendments of 1990. The federal rule includes emission guidelines for existing units and standards of performance for new, modified or reconstructed sources. EPA published the rule for existing small MWC units in the **Federal Register** on December 6, 2000, (65 FR 76378), to be codified at 40 CFR part 60, subpart BBBB (Emission Guidelines for Small Municipal Waste Combustion Units.) EPA published rules for new, modified and reconstructed small MWC units in the **Federal Register** on December 6, 2000, (65 FR 76350), to be codified at 40 CFR part 60, subpart AAAA (New Source Performance Standards for New Small Municipal Waste Combustion Units). The regulatory text and other background information for these final rulemakings can be accessed electronically from the EPA Technology Transfer Network website. For small MWC the Web site address is: *http://www.epa.gov/ttn/atw/129/mwc/rimwc2.html.*

Sections 111(d) and 129 of the Act require States in which a designated existing facility is operating one or more small MWC units to submit to EPA a plan to implement and enforce the emission guidelines. If, however, there are no small MWC units and the State therefore chooses not to develop and submit such a plan, it must submit a negative declaration letter. (40 CFR 60.1510, 62.06.) Section 129 of the Act requires that the State plan be at least as protective as the emission guidelines and must provide for compliance by the affected facilities no later than 3 years after EPA approves the State plan, but no later than 5 years after EPA