

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[LA-14-1-7239; FRL-5905-7]

Approval and Promulgation of Air Quality Implementation Plans of New Source Review (NSR) Implementation Plan Addressing NSR in Nonattainment Areas; Louisiana; Louisiana Administrative Code (LAC), Title 33, Environmental Quality, Part III, Air, Chapter 5, Permit Procedures, Section 504, Nonattainment NSR Procedures**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision, submitted by the State of Louisiana for the purpose of meeting requirements of the Clean Air Act (the Act), as amended in 1990, with regard to NSR in areas that have not attained the National Ambient Air Quality Standards (NAAQS). This approval action was proposed in the **Federal Register** (FR) on October 6, 1995, and no comments were received on the proposal.

EFFECTIVE DATE: This action is effective on November 10, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency,
Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733

Louisiana Department of Environmental Quality, H. B. Garlock Building, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Barrett, Air Permits Section (6PD-R), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7227.

SUPPLEMENTARY INFORMATION:**I. Background**

The air quality planning requirements for nonattainment new source review are set out in part D of Title I of the Act, as amended in 1990. The EPA has issued a "General Preamble" describing

EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D; including those State submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992)) and (57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this action and the supporting rationale.

Prior to EPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance 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."

II. Rulemaking Action*A. Procedural Background*

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act, 42 U.S.C. 7410(a)(2), provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.¹ Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

After adequate public notice, the State of Louisiana held a public hearing on December 30, 1992, to entertain public comment on the NSR implementation plan, which replaced the emergency rules submitted to EPA on November 10, 1992. Following the public hearing, the plan was adopted by the State on February 20, 1993, and submitted to EPA on March 3, 1993, as a proposed revision to the SIP. The State submitted to EPA revisions for the Louisiana SIP to implement the NSR requirements of the Act in nonattainment areas in Louisiana. Louisiana made the SIP revision to LAC Title 33, Part III, Chapter 5, Permit Procedures, by the addition of section 504. Nonattainment New Source Review Procedures. The

SIP revision was reviewed by EPA to determine administrative completeness shortly after its submittal. The completeness review was based upon the criteria as set out at 40 CFR part 51, Appendix V. The submittal was found to be complete on July 10, 1993, and a letter dated August 3, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. Prior to EPA acting on these revisions, the State submitted a notice of adoption and final rule on Regulation LAC 33:III, Chapter 5, on November 15, 1993. That submittal included an amended Section 504 in order to meet the requirements mandated by sections 173 and 182 of the Act. This action applies to Section 504 of the LAC.

In this action, EPA approves the Louisiana nonattainment NSR SIP rules identified in this notice. Those sections submitted to EPA not included in the revisions specifically addressed in this action will be the subject of a future rulemaking. In this rulemaking action on the Louisiana nonattainment NSR SIP, EPA has applied its interpretations, taking into consideration the specific factual issues presented.

B. General Nonattainment NSR Requirements

The statutory requirements for nonattainment NSR SIPs and permitting are found at sections 172 and 173.

The Act requires all States to have submitted, at a minimum, the following nonattainment NSR provisions by November 15, 1992:

1. Provisions to assure that calculation of emissions offsets, as required by section 173(a)(1)(A), are based on the same emissions baseline used in the demonstration of reasonable further progress. Louisiana has established provisions to satisfy this requirement in LAC sections 504.F.4 and 504.F.5.

2. Provisions to allow, according to section 173(c)(1), offsets to be obtained in another nonattainment area if: the area in which the offsets are obtained has an equal or higher nonattainment classification; and emissions from the nonattainment area, in which the offsets are obtained, contribute to an NAAQS violation, in the area in which the source would construct. Louisiana has established provisions to satisfy this requirement in LAC Section 504.F.9.

3. Provisions to assure, according to section 173(c)(1), that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source is to commence

¹ Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

operation. Louisiana has established provisions to satisfy this section in LAC Section 504.F.3.

4. Provisions to assure that emissions increases, from new or modified major stationary sources, are offset by real reductions in actual emissions, as required by section 173(c)(1). Louisiana has established provisions to satisfy this requirement in LAC Sections 504.D.3 and 504.F.7.

5. Provisions, according to section 173(c)(2), to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements. Louisiana has established provisions to satisfy this section in LAC Sections 504.F.5. and 504.F.10.

6. Provisions, according to section 173(a)(5) that, as a prerequisite to issuing any part D permit, the State will require an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. Louisiana has established provisions to satisfy this requirement in LAC Section 504.D.6.

7. Provisions, according to section 173(e), that allow any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning, if four conditions are met: (a) the proposed modification is for expansion of a facility already permitted for such purposes; (b) the source has used all available offsets and all reasonable means to obtain offsets and sufficient offsets are not available; (c)

the source has obtained a written finding by the appropriate, sponsoring Federal agency that the testing is essential to national security; and (d) the source will comply with an alternative measure designed to offset any emissions increases not directly offset by the source.

In lieu of imposing any alternative offset measures, the permitting authority may impose an emission offset amounting to no more than 1.5 times the average cost of stationary control measures adopted in that area during the previous three years. Louisiana has established provisions to satisfy this requirement at LAC Section 504.D.7.

8. Provisions, according to section 173(a)(3), to assure that owners or operators, of each proposed new or modified major stationary source, demonstrate that all other major stationary sources, under the same ownership in the State, are in compliance with the Act. Louisiana has established provisions to satisfy this section at LAC Section 504.D.1. This provision is recodified and rewritten from LAC 33:III, Chapter 5, Section 505.H.8., which was previously approved in the **Federal Register** (47 FR 6015, February 10, 1982).

9. Provisions, according to section 173(a)(2), to assure that permits for new and modified major stationary sources to construct and operate may be issued if the proposed source is required to comply with the lowest achievable emission rate. Louisiana has established provisions to satisfy this requirement in LAC Section 504.D.2. This provision is recodified and rewritten from LAC 33:III, Chapter 5, Section 505.H.8., which was previously approved in the **Federal Register** (47 FR 6015, February 10, 1982).

10. Additionally, the State must assure that no interpollutant trading is allowed as defined in 40 CFR part 51, Appendix S, section IV, condition 3. Louisiana has established provisions to satisfy this requirement in LAC Section 504.F.1.

11. The public notice and participation requirements, previously located in Section 504, have now been placed in LAC 33:III, Chapter 5, Section 531, which will be acted on by EPA in a future rulemaking action. These requirements were located in the March 3, 1993, submittal and were subsequently moved in the November 15, 1993, submittal to Section 531. Public participation requirements have previously been approved in the SIP.

C. Ozone

The general nonattainment NSR requirements are found in sections 172 and 173 of the Act and must be met by all nonattainment areas. Requirements for ozone that supplement or supersede these requirements are found in subpart 2 of part D. In addition, subpart 2 includes section 182(f) which states that requirements for major stationary sources of volatile organic compounds (VOC) shall apply to major stationary sources of oxides of nitrogen (NO_x) unless the Administrator makes certain determinations related to the benefits or contribution of NO_x control to air quality, ozone attainment, or ozone air quality. States were required under section 182(a)(2)(C) to adopt new NSR rules for ozone nonattainment areas by November 15, 1992.

Louisiana has established major source thresholds and offset ratios for VOC and included provisions for NO_x major stationary sources as follows:

Area classification	Major source threshold	Offset ratio minimum	NO _x provisions
Marginal	100 tpy	1.10 to 1	See paragraph below.
Moderate	100 tpy	1.15 to 1	Identical to VOC.
Serious	50 tpy	1.20 to 1	See paragraph below.
Severe	25 tpy	1.30 to 1	Identical to VOC.
Extreme	Not applicable	Not applicable	Not applicable.

The EPA approved a petition for exemption from NO_x requirements pursuant to section 182(f), for the marginal ozone nonattainment area of Lake Charles (Calcasieu Parish), on May 22, 1997, and which was published on May 29, 1997 (see 62 FR 29062); therefore, NO_x nonattainment NSR will not be required in that area. Further, EPA approved the redesignation of the marginal ozone nonattainment area of Lake Charles (Calcasieu Parish), to attainment for ozone on April 10, 1997,

and which was published on May 2, 1997 (see 62 FR 24036).

The EPA approved a petition for exemption from NO_x requirements pursuant to section 182(f), for the serious ozone nonattainment area of Baton Rouge, on January 18, 1996, and which was published on January 26, 1996 (see 61 FR 2438); therefore, NO_x nonattainment NSR will not be required in that area.

Louisiana has established all of the above requirements for all other ozone nonattainment areas.

Additionally, for nonclassifiable (transitional or incomplete data) ozone nonattainment areas, State rules for the marginal area classification apply. For further information on nonclassifiable areas see, "General Preamble" 57 FR 55624 (April 16, 1992), and the "NO_x supplement to the General Preamble" 57 FR 13523 (November 25, 1993).

In addition, Louisiana's plan submittal reflects appropriate modification provisions, including a *de minimis* level of 25 tons.

D. Carbon Monoxide (CO)

The general part D NSR permit requirements apply in CO nonattainment areas, and are supplemented by the CO requirements in subpart 3 of part D.

Louisiana has established a major source threshold of 100 tons per year,

and a minimum offset ratio of greater than 1.00 to 1 for moderate CO nonattainment areas. Louisiana has established a major source threshold of 50 tpy, and a minimum offset ratio of greater than 1.00 to 1 for serious nonattainment areas.

Louisiana has no areas designated as nonattainment for CO at this time.

E. Particulate Matter Less Than 10 Micrometers In Diameter (PM-10)

Pursuant to section 189(a)(2) 42 U.S.C. 7513a(a)(2), all States, with a PM-10 nonattainment area classified as moderate, were required to submit an NSR permit program SIP revision by June 30, 1992, or 18 months after the designation of such an area.

Louisiana has established major source thresholds, offset ratios, modification significance levels, and PM-10 precursor provisions as follows:

Area classification	Major source threshold	Offset ratio minimum	Significance level	Precursor provisions
Moderate	100 tpy	Greater than 1 to 1	15 tpy	See paragraph below.
Serious	50 tpy	Greater than 1 to 1	15 tpy	See paragraph below.

Since Louisiana has no areas designated as nonattainment for PM-10 at this time, EPA is approving the PM-10 NSR provisions for the limited purpose of strengthening the SIP and not for satisfying the part D NSR requirements for PM-10. If an area is designated nonattainment for PM-10, then the State would be required to submit provisions for PM-10 precursors unless it has sought and obtained a determination by the EPA under section 189(e).

F. Sulfur Dioxide (SO₂)

States with SO₂ nonattainment areas were required to submit NSR implementation plans by May 15, 1992. States with areas that are designated or redesignated as nonattainment after the Amendments have 18 months to submit such plans.

Louisiana has established a major source threshold of 100 tpy, a minimum offset ratio of greater than 1 to 1, and a modification significance level of 40 tpy.

Louisiana has no areas designated as nonattainment for SO₂ at this time.

G. Lead

Generally, the date by which a plan must be submitted for an area is triggered by the area's nonattainment designation. For areas designated nonattainment for the primary lead NAAQS in effect at enactment of the 1990 Amendments; under section 171(b), States must submit SIPs which meet the applicable requirements of part D within 18 months of the date of enactment of the 1990 Amendments.

Louisiana has established a major source threshold of 100 tpy, a minimum offset ratio of greater than 1 to 1, and a modification significance level of 0.6 tpy.

Louisiana has no areas designated as nonattainment for Lead at this time.

III. Final Action

The EPA is approving the plan revisions submitted on March 3, 1993, as amended on November 15, 1993, regarding NSR. The State of Louisiana has submitted a complete plan to implement the NSR provisions of part D. Each of the program elements mentioned above were properly addressed, with the exception of PM-10 precursor requirements. Since Louisiana has no areas designated as nonattainment for PM-10 at this time, EPA is approving the PM-10 NSR provisions for the limited purpose of strengthening the SIP and not for satisfying the part D NSR requirements for PM-10. If an area is designated nonattainment for PM-10, then the State would be required to submit provisions for PM-10 precursors unless it has sought and obtained a determination by EPA under section 189(e).

Those sections submitted to EPA, not included in the revisions specifically addressed in this action, will be the subject of a future rulemaking.

Louisiana LAC 33:III.Chapter 5.Section 504 is approvable under the requirements for nonattainment area permitting regulations as outlined in 40 CFR part 51 and in part D. These revisions incorporate requirements of the Act for the construction and operation of new and modified major stationary sources of air pollutants.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

VI. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, 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 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.

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

VII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VIII. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 1997. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: September 30, 1997.
Jerry Clifford,
Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(68) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(68) A revision to the Louisiana SIP addressing the nonattainment NSR program for Louisiana was submitted by the Governor of Louisiana on March 3, 1993, and November 15, 1993.

(i) Incorporation by reference.

(A) Revision to LAC, Title 33, Part III. Air, Chapter 5. Permit Procedures, by the addition of Section 504. Nonattainment New Source Review Procedures, as promulgated in the Louisiana Register, Volume 19, Number 2, 176-183, February 20, 1993; effective February 20, 1993, and submitted by the Governor on March 3, 1993.

(B) Revisions to LAC, Title 33, Part III. Air, Chapter 5. Permit Procedures, Section 504. Nonattainment New Source Review Procedures, Subsections: A., Applicability, Paragraphs A(1), A(2), A(3), A(4); D., Nonattainment New Source Requirements, Paragraph D(4); Delete G., Permit Procedures, Public Participation and Notification; Reletter H., Definitions, to G., and revise definitions for Major Modification (paragraphs: a., c.iii, c.iv, c.v.(a)(b), c.vi, c.vii), Major Stationary Source (paragraphs: a., d.i); Delete Table 1; Renumber Table 2, Major Stationary Source/Major Modification Emission Thresholds, to Table 1, and revise Footnote 1., as promulgated in the Louisiana Register, Volume 19, Number 11, 1420-1421, November 20, 1993; effective November 20, 1993, and submitted by the Governor on November 4, 1993.

(ii) Additional material.

(A) Letter dated January 7, 1994, signed by the Governor of Louisiana, which clarifies that section 504 is to be reviewed under the SIP program.

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[FR Doc. 97-27017 Filed 10-9-97; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-5906-2]

New Hampshire: Final Authorization of State Hazardous Waste Management Program Revisions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule; correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of November 14, 1994 (59 FR 56397) the authorization of New Hampshire's Hazardous Waste Management Program Revision under the Resource Conservation and Recovery Act (RCRA). The document stated that the effective date was January 13, 1994. This was a typographical error. The correct effective date is January 13, 1995. This document corrects that error.

This document is also correcting typographical errors that were in the crosswalk listings of the federal requirements in the same immediate final rule.

EFFECTIVE DATE: The effective date for the immediate final rule published at 59 FR 56397 is January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Geri Mannion, U.S. EPA Region I (CHW), J.F.K. Federal Building, Boston, Massachusetts, 02203-21, Phone (617) 565-3607.

Dated: September 24, 1997.

John P. DeVillars,
Regional Administrator, Region I.

In the table beginning on page 56399, the following items are corrected to read as follows:

Section II: Non-HSWA Requirements Prior to Non-HSWA Cluster 1. Checklist (2) Permit Rules: Settlement Agreement, FR 39611-39623, 09/01/83.

Section III. Non-HSWA Cluster I. Checklist (13) Definition of Solid Waste, 50 FR 614-668, 01/04/85, as amended on 04/11/85 at 50 FR 14216-14220, and 50 FR 33541-33543 on 08/20/85.

Section V: Non-HSWA Cluster III. Checklist (28) Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25422-25486, 07/14/86, as amended at 51 FR 29430-39431 on 08/15/86. (Non-HSWA Cluster III and HSWA Cluster I)

Section VI: Non-HSWA Cluster IV. Checklist (46) Technical Correction; Identification and Listing of Hazardous Waste, 53 FR 13382, 04/22/88.

Section VII: Non-HSWA Cluster V. Checklist (54) Permit Modifications for