

## V. Proposed Action

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

## VI. Request for Public Comments

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

## VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

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

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

Dated: July 15, 2002.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[LA-61-3-7565; FRL-7250-4]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** In this action, the EPA is proposing to approve revisions to the State of Louisiana's State Implementation Plan (SIP). The revisions concern the nonattainment New Source Review (NSR) procedures for the five-parish Baton Rouge ozone nonattainment area (hereinafter referred to as the Baton Rouge area). The revisions include increases to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in nonattainment areas. The minimum offset ratios were increased for classifications of serious and severe ozone nonattainment. The revisions will also allow an increase in volatile organic compound (VOC) emissions to be offset by a decrease in emissions of nitrogen oxides (NO<sub>x</sub>) if the net result is a decrease in ozone levels. The revisions require that if NO<sub>x</sub> emissions decreases are used for VOC emissions increases, the permit for which the offsets are required must have been issued on or before November 15, 2005 and meet additional requirements to ensure a net air quality benefit.

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

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

**ADDRESSES:** Written comments should be sent to:

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

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

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

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This section provides additional information by addressing the following questions:

- I. What action is the EPA taking?
- II. Why is this action necessary?
- III. What does this action do?
- IV. What is the Baton Rouge ozone nonattainment area?
- V. Whom does this action affect?
- VI. What is the history of the LDEQ nonattainment NSR program?
- VII. Are the nonattainment NSR revisions approvable?
- VIII. How does the State’s NSR regulation In Chapter 5 interact with The NO<sub>x</sub> control regulation in Chapter 22 and the revised banking regulation in Chapter 6?
- IX. Administrative Requirements.

**Background***I. What action Is the EPA Taking?*

The EPA is proposing to approve 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 Section 504, 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<sub>x</sub>. The revisions require that if NO<sub>x</sub> 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.

*II. Why Is This Action Necessary?*

The Baton Rouge area was classified as a serious ozone nonattainment area (40 CFR 81.319). We received the Louisiana rule that we are considering in this proposed action on December 31, 2001, as a component of the an Attainment Plan and Transport Demonstration (hereinafter, the Attainment Plan/Transport SIP) for the Baton Rouge area submitted by the LDEQ. This revision to the Attainment Plan/Transport SIP specifies emission reduction strategies designed to bring the Baton Rouge area into compliance with the ozone NAAQS. One component of the Attainment Plan/Transport SIP is the revised nonattainment NSR rule that has been enacted at Louisiana Administrative Code (LAC) 33:III.504. This action is necessary to determine whether that revised rule is an approvable component of the Attainment Plan/Transport SIP.

*III. What Does This Action Do?*

In this action, we are proposing to approve revisions to the Louisiana SIP that have been enacted at Louisiana Administrative Code (LAC) 33:III.504, which contains the rules for nonattainment NSR procedures that will apply to the Baton Rouge area. 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<sub>x</sub>. For a nonattainment area with a classification of serious for ozone, the new minimum offset ratio for VOCs and for NO<sub>x</sub> is 1.20 to 1 with Lowest Achievable Emission Rate (LAER) technology or 1.40 to 1 without LAER using internal offsets. For a nonattainment area classified severe for ozone, the new minimum offset ratio for VOCs and for NO<sub>x</sub> is 1.30 to 1 with LAER technology or 1.50 to 1 without LAER using internal offsets. 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<sub>x</sub>. 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. 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<sub>x</sub> increases shall be from decreases of NO<sub>x</sub>. NO<sub>x</sub> 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<sub>x</sub> or VOCs, or any combination of NO<sub>x</sub> and VOC decreases. If NO<sub>x</sub> 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<sub>x</sub> 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

Pollutant	Major stationary source threshold values (tons/year)	Major modification significant net increase (tons/year)	Offset ratio minimum
<b>Major Stationary Source/ Major Modification Emission Threshold</b>			
Ozone VOC/NO <sub>x</sub> Marginal .....	100	40 (40)	1.10 to 1
Moderate .....	100	40 (40)	1.10 to 1
Serious .....	50	25 (5)	1.20 to 1 w/LAER or 1.4 to 1 internal w/out LAER

TABLE 1.—MINIMUM OFFSET RATIOS FOR NEW AND MODIFIED MAJOR STATIONARY SOURCES—Continued

Pollutant	Major stationary source threshold values (tons/year)	Major modification significant net increase (tons/year)	Offset ratio minimum
Severe .....	25	25 (5)	1.30 to 1 w/LAER or 1.5 to 1 internal w/out LAER

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<sub>x</sub> to VOC emissions reductions needed for attainment.

#### IV. What Is the Baton Rouge Ozone Nonattainment Area?

The Baton Rouge ozone nonattainment area, located in southern

Louisiana, consists of East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Livingston Parishes (40 CFR 81.319).

#### V. 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<sub>x</sub> 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<sub>x</sub> 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 <sub>x</sub> )	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<sub>x</sub> 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<sub>x</sub> increases will still be subject to the construction schedule and other provisions of the EPA's Transitional Guidance. See 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."

#### VI. What Is the History of the LDEQ Nonattainment NSR Program?

The current provisions for nonattainment NSR for permitting new major stationary sources and major modifications at major stationary sources in the Baton Rouge area are found at LAC 33:III.504. The EPA approved the original regulations on May 31, 1972, (37 FR 10869) with the Louisiana SIP. A number of revisions to the regulations were approved between 1972 and the present. These revisions are outlined in 40 CFR part 52, subpart T, for Louisiana. Under sections 107(d)(1)(C) and 181(a) of the Act, the Baton Rouge area was designated nonattainment for the 1-hour ozone NAAQS and classified as "serious" based on its design value of 0.164 ppm in 1989. These nonattainment designations and classifications were codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991).

On January 26, 1996 (61 FR 2438), we granted an exemption under section 182(f) of the CAA from the reasonably available control technology (RACT) and nonattainment NSR requirements for major stationary sources of NO<sub>x</sub>. In granting these exemptions we reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO<sub>x</sub> emissions controls. We approved the Louisiana nonattainment NSR (LAC 33:III.504) procedures October 10, 1997 (62 FR 52951) and revisions to Section 504 on January 5, 1999 (64 FR 415) and May 31, 2001 (66 FR 29491).

On May 9, 2001, we proposed our finding that the Baton Rouge ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date (66 FR 23646). The LDEQ requested rescission of the NO<sub>x</sub> waivers for the Baton Rouge area on September 24, 2001, based on revised

modeling that demonstrated that NO<sub>x</sub> controls will contribute to attaining the ozone NAAQS, and on December 31, 2001, we received from the LDEQ, the Attainment Plan/Transport SIP for the Baton Rouge area which included these revisions to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in the Baton Rouge area. We proposed approval of the rescission of the NO<sub>x</sub> exemptions on May 7, 2002 (67 FR 30638).

On December 20, 2001, Louisiana enacted the revisions to its rule for nonattainment NSR, LAC 33:III.504, that are the subject of this proposed rule.

#### *VII. Are the Nonattainment NSR Revisions Approvable?*

Yes, the nonattainment NSR revisions are approvable. The revisions to the LAC 33:III.504, rules for nonattainment NSR procedures for the Baton Rouge area, fulfill the requirements at Section 172(c)(5) of the CAA and at 40 CFR 51.165. The LAC revisions for changes to the minimum offset ratios fulfill offset requirements for both serious and severe ozone nonattainment areas as described in Sections 182(c)(6), (8), & (10) and 182(d)(2) of the CAA and are, in fact, more stringent than required by the Act.

The Attainment Plan/Transport SIP revisions also allow an increase in VOC emissions to be offset by a decrease in emissions of NO<sub>x</sub> using the ratios set forth in Table 1. As previously noted, 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). While the EPA does not have specific requirements for IPT that apply to all circumstances, we recognize that IPT can be allowed under limited circumstances. Our position on IPT can be found at Appendix 16.9 in the EIP Guidance. An 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. 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 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, the EPA determined that the LDEQ rule is consistent with the IPT provisions in the EIP Guidance.

In the December 2001 SIP submission, the LDEQ conducted attainment demonstration modeling, which indicated that a reduction in NO<sub>x</sub> emissions and a further reduction in VOC emissions are required in the Baton Rouge area to lower ozone levels. As is recognized in the CAA, VOCs and NO<sub>x</sub> emissions combine in the atmosphere to create ozone, and accordingly a reduction in the levels of these pollutants can lower ozone levels. Furthermore, Section 182(c)(2)(C) of the CAA provides for states with ozone problems to substitute NO<sub>x</sub> reductions for VOC reduction in their Attainment and Reasonable Further Progress (RFP) Plans.

In allowing substitution of NO<sub>x</sub> emission reductions for VOC emission reductions, Section 182(c)(2)(C) of the CAA states that the resulting reductions "in ozone concentrations" must be "at least equivalent" to that which would result from 3% VOC reductions required as a demonstration of RFP under Section 182(c)(2)(B). Our NO<sub>x</sub> Substitution Guidance (EPA, December 1993) provides that the RFP reductions should be consistent with those needed for attainment and that the Attainment and RFP Plans show that reduction of NO<sub>x</sub> 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.

The pollutants being offset must impact the environment in a similar manner and increases in emission of VOCs cannot be replaced with another VOC of lesser reactivity (40 CFR 51.165(a)(3)(ii)(D)). Additionally, 40 CFR 51.100(s) defines VOCs; this regulation and LAC 33:III.2117 also define "non-VOCs" or carbon-containing compounds which do not participate in atmospheric photochemical reactions which may produce ozone. These "non-VOCs" would not be eligible for the proposed emission offsets.

An increase in VOC emissions offset by a decrease in emissions of NO<sub>x</sub>

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<sub>x</sub> for VOC trade will not be beneficial to the environment.

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 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 are 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 hazardous air pollutants in 40 CFR part 61 or part 63. Also the current state regulations state that issuance of a permit by LDEQ does not relieve any owner or operator of the responsibility to comply with the provisions of local, state, or federal law.

The Technical Support Document for this action provides a more detailed discussion of our proposed approval.

#### *VIII. How Does the State's NSR Regulation in Chapter 5 Interact With the NO<sub>x</sub> Control Regulation in Chapter 22 and the Revised Banking Regulation in Chapter 6?*

The State has recently revised the NO<sub>x</sub> control regulation in Chapter 22. This NO<sub>x</sub> 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<sub>x</sub> 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 a fuller explanation of the area's ozone seasons, see LAC II: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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> emission increases during the ozone season must be offset by NO<sub>x</sub> ERCs from the ozone season. Non-ozone season NO<sub>x</sub> increases may be met by either ozone or non-ozone NO<sub>x</sub> ERCs. The annual NO<sub>x</sub> increase must be offset by the total combination of ozone and non-ozone season surplus NO<sub>x</sub> emission reduction credits.

The stated purpose of the revised emissions banking rule in Chapter 6 is to enable stationary sources to identify and acquire emission reductions for NSR purposes. The Chapter 6 rule does not address the requirement to keep separate certifying, determining and recording procedures for NO<sub>x</sub> ERCs during the ozone and non-ozone seasons. The identification, certification, acquisition, recordkeeping and determination of "Surplus When Used" emission reduction credits must be for the ozone season and the non-ozone season time periods. The State has indicated by letter from Mr. Dale Givens to EPA dated May 3, 2002 that the State would implement the rule by operating the emissions reduction bank in such a manner. EPA requests that in response to comments on EPA's proposed approval of the Chapter 5 and Chapter 6 rules, the State affirm and

detail the procedures for the determination of NO<sub>x</sub> surplus emission reduction credits resulting from the split emission limitations for the NO<sub>x</sub> RACT rule in Chapter 22.

The emission offset provisions contained in the Chapter 5 nonattainment NSR rules indicate that offsets of VOC emissions may be met by surplus NO<sub>x</sub> emission reductions. The VOC emission offsets met by surplus NO<sub>x</sub> ERCs must be for both the ozone season and non-ozone seasons. In other words, VOC emission increases during the ozone season must be offset by NO<sub>x</sub> ERCs from the ozone season. Non-ozone season VOC increases may be met by either ozone or non-ozone NO<sub>x</sub> ERCs. The annual VOC increase must be offset by the total combination of ozone and non-ozone season surplus NO<sub>x</sub> emission reduction credits.

#### *IX. Administrative Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Volatile organic compounds, Reporting and recordkeeping requirements.

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

Dated: July 15, 2002.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

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