that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add a new § 165.T11–035 to read as follows:

§ 165.T11–035 Safety Zone: Oceanside, CA.

(a) *Location.* The area described as follows is a safety zone: an area encompassed by the following points beginning at the point latitude 33°09′87″ N, longitude 117°22′81″ , thence northeasterly to latitude 32°10′14″ N, longitude 117°22′33″ W, thence northwesterly to latitude 33°11′49″ N, longitude 117°23′36″ W, thence northerly to latitude 32°11′64″ N, longitude 117°23′36″ W, thence southeast to the point of beginning.

(b) *Effective dates.* This safety zone will be effective at 11:30 a.m. (PDT) May 4, 2003 through 3:30 p.m. (PDT) May 4, 2003. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander, who may be contacted via VHF–FM Channel 16.

Dated: April 23, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–11168 Filed 5–1–03; 1:51 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–60–1–7562; FRL–7492–9]

Approval and Promulgation of Implementation Plans; Louisiana; Rescission of the Section 182(f) and 182(b)(1) Exemptions to the Nitrogen Oxides Control Requirements for the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We are approving revisions to the Louisiana State Implementation Plan (SIP). In particular, we are finalizing our proposal to rescind the section 182(f) and 182(b)(1) nitrogen oxides (NO_X) exemptions for the Baton Rouge (BR) ozone nonattainment area, which proposal was published on May 7, 2002 (67 FR 30638). We are rescinding the NO_X exemptions based on revised photochemical grid modeling recently conducted for the BR area SIP which indicates that control of NO_X emissions will help the area attain the National Ambient Air Quality Standard (NAAQS) for ozone. The State of Louisiana requested that EPA rescind the NO_X exemption based on this new modeling. Upon rescission of the NO_X exemptions, the State will need to implement NO_X controls to meet the Clean Air Act's (the Act) requirements for Reasonably Available Control Technology (RACT), Nonattainment New Source Review (NNSR), vehicle Inspection/Maintenance (I/M), and general and transportation conformity.

The EPA is finalizing the proposal to rescind the NO_X exemptions for the BR ozone nonattainment area as meeting the requirements of the Act.

DATES: This rule will be effective on June 4, 2003.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana, 70810.

Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–6691, and *Shar.Alan@epa.gov.*

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

1. What Actions Are We Taking in This Document?

On May 7, 2002 we proposed to rescind the section 182(f) and 182(b)(1) NO_X exemptions for the BR ozone nonattainment area (67 FR 30638). The BR area consists of the 5 ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. Photochemical grid modeling recently conducted for the BR area SIP indicates that control of NO_X emissions will help the area attain the NAAQS for ozone. The State of Louisiana requested that EPA rescind the NO_X exemption based on this new air modeling. In this action we are rescinding the section 182(f) and 182(b)(1) NO_X exemptions based on the State's demonstration that control of NO_X emissions will contribute to the attainment of the ozone NAAQS in the BR area. Since the reason for the exemptions (per section 182(f) and 182(b)(1)) was that control of NO_X exemptions would not contribute to attainment, it follows that the exemptions must be rescinded. Our responses to the written comments received on our May 7, 2002, proposal are in section 4 of this document.

On July 17, 2002 (67 FR 46970) we notified the public that the NO_X emissions budgets contained in the BR area's attainment demonstration SIP are adequate for transportation conformity purposes. These budgets are to be used for future conformity determinations in the BR area, and are effective as of August 1, 2002.

On September 26, 2002 (67 FR 60594) we approved Louisiana's I/M program for the BR ozone nonattainment area. *See* Louisiana Administrative Code (LAC), Title 33, Chapter 14 (LAC 33:III, Chapter 14). Louisiana's I/M program is now in effect for the BR area.

On September 27, 2002 (67 FR 60877) we approved Louisiana's NO_X RACT for the BR ozone nonattainment area. *See* LAC 33:III, Chapter 22. The NO_X RACT rules are now in effect for the BR area.

On September 27, 2002 (67 FR 60871) we approved Louisiana's emissions reduction credits banking program for the BR area. *See* LAC 33:III, Chapter 6. These rules are now in effect for the BR area.

On September 30, 2002 (67 FR 61260) we approved Louisiana's NNSR procedures for the BR area. *See* LAC 33:III, Chapter 5. These rules are now in effect for the BR area.

On October 2, 2002 (67 FR 61786) we approved Louisiana's attainment demonstration plan and SIP for 1-hour ozone standard within the BR area. This attainment demonstration plan and SIP are now in effect.

As stated in section V of our proposal (67 FR 30639) the section 182(f) NO_X waiver exempted Federal projects from general conformity determinations with respect to NO_X. When the exemption is rescinded, Federal agencies making future general conformity determinations for Federal projects in the BR area will be subject to the NO_X requirements outlined in the State's general conformity rules. The State will not need to revise its general conformity rules if the section 182(f) NO_X waiver is rescinded. *See* LAC 33:III, Chapter 14, Subchapter A, and 40 CFR part 51, subpart W for more information. Existing federal projects will not be affected by the rescission of the sections 182(f) and 182(b)(1) NO_X exemptions and will continue to be valid to the same extent as generally allowed under the rules; however, new federal projects will have to observe the NO_X requirements outlined in the State's general conformity rules.

Pursuant to the above-listed rulemaking actions concerning Louisiana's SIP and this final action, the State will need to implement the Act's NO_X requirements for general conformity, transportation conformity, vehicle I/M, RACT, banking, and NNSR purposes.

2. When Did the Public Comment Period for Our Proposal Expire?

The public comment period for our proposal (67 FR 30638) expired on June 7, 2002.

3. Who Submitted Comments to Us?

We received written comments on our May 2, 2002, proposal (67 FR 30638) from Parish of Ascension (PA), Parish of West Baton Rouge (PWBR), Parish of Iberville (PI), Parish of Livingston (PL), Parish of East Baton Rouge and City of Baton Rouge (PEB), Mc Daniel and Associates (MDA) on behalf of the Baton Rouge Ozone Task Force, and the Tulane Environmental Law Clinic (TELC) on behalf of the Louisiana Environmental Action Network (LEAN).

4. How Do We Respond to the Submitted Written Comments?

Our responses to the written comments concerning the May 7, 2002 (67 FR 30638) proposal are as follows:

Comment #1: The PA, PWBR, PI, PL, PEB, and MDA all commented favorably and stated that they support our proposed rescission of the section 182(f) and 182(b)(1) NO_X exemptions.

Response to comment #1: We appreciate the commenters' support concerning our proposed action and have considered these comments in our final determination.

Comment #2: LEAN expressed conditional support for the rescission of the section 182(f) and 182(b)(1) NO_X exemptions in our proposal.

Response to comment #2: We appreciate the commenters' support and will respond to the commenters' concerns in the following responses to comments.

Comment #3: LEAN commented that the rescission should not be used to increase emissions of Volatile Organic Compounds (VOCs) above legally allowable levels.

Response to Comment #3: The EPA agrees that the rescission of the NO_X exemptions should not be used to increase VOC emissions above legally allowable levels. We addressed similar concerns in our approval of the

Louisiana attainment demonstration plan and SIP for the 1-hour ozone standard for the BR area (67 FR 61786) published on October 2, 2002, as well as in the approval of the State's NNSR procedures (67 FR 61260) published on September 30, 2002. In the approval of the attainment demonstration, we concluded that the State had adequately demonstrated that additional NO_X reductions will contribute to the attainment of the ozone NAAQS, which is the basis for the approval of this request from the State of Louisiana that EPA rescind the NO_X exemptions. Since the NO_X exemptions were granted to the State of Louisiana in 1996, modeling techniques and emission inventory methodologies/tools have been enhanced and improved. We reviewed and approved the new modeling for the BR area's ozone attainment demonstration plan and SIP (67 FR 61786, October 2, 2002) as leading to attainment of the standard and to overall benefit to reducing ozone. This attainment demonstration plan and SIP are now in effect. Louisiana conducted extensive Urban Airshed Modeling (UAM) in support of its 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 BR area. The UAM sensitivity simulations indicate that a 30 percent ''across the board'' reduction in VOC emission yielded less than a 1 part per billion decrease in the ozone peak for the 3 ozone episodes modeled. Accordingly, a reduction of one ton of NO_X emissions was more beneficial than an equivalent reduction in VOC emissions. On the basis of this modeling, Louisiana also determined that VOC emission credits should not be allowed to offset NO_X increases.

The BR area is currently designated as a serious ozone nonattainment area (40 CFR 81.319). A major stationary source in the BR ozone nonattainment area will need to comply the new offset ratios as a part of the NNSR procedures. The NNSR procedures allow an affected source to implement the Lowest Achievable Emission Rate (LAER). For a nonattainment area with a classification of serious for ozone, the minimum offset ratio for VOCs and for NO_X is 1.20 to 1 if 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 Act 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.

Adoption of offset ratios like 1.2 to 1, 1.4 to 1, or 1.5 to 1 (greater than 1 to 1), as a part of the NNSR procedures, will translate into the environment becoming the beneficiary of additional twenty, forty, or fifty percent reductions in emissions, as the case might be. Under Louisiana's NNSR procedures, all emission reductions claimed as offset credit for significant net NO_X increases shall be from decreases of NO_X. The NO_X credits will be allowed to offset VOC increases, but not vice versa. Although NO_X credits may be allowed to offset VOC increases, we believe there are several regulatory measures in place that limit the ability of a source to exchange increases in VOCs with NO_X reductions. 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, in its NNSR program, November 15, 2005, as a ''sunset date'' after which no permits will be issued or modified allowing NO_X credits to offset VOC increases. *See* 67 FR 61260. On September 30, 2002 (67 FR 61260) we approved Louisiana's NNSR program.

Furthermore, VOC emissions are separately regulated under EPA's Maximum Achievable Control Technology (MACT) standards for the major sources of air toxics.

Rescission of the NO_X exemptions and implementation of additional NO_X control requirements for point sources in the BR ozone nonattainment area will have an environmental benefit. Rescission of the NO_X exemptions will require the State to implement applicable NO_X provisions for: RACT, NNSR, banking, vehicle I/M, and general and transportation conformity. As a result of the rescission of the NO_X exemptions, Louisiana will now have to meet all of the applicable NO_X requirements of the Act. The State has already adopted and promulgated these applicable requirements. *See* section 1 of this document for a listing of these regulatory measures.

Based on the above information, we support the State's request and are rescinding the NO_X exemptions.

Comment #4: LEAN commented that the State should not have been granted the exemption, that EPA mistakenly granted the exemptions to allow LDEQ to issue permits for emissions of NO_X in amounts far greater than would have been legal without the exemptions, and the rescission will increase pollution in the area. The commenter suggests the NO_X exemptions were unjustified.

Response to Comment #4: We disagree with the commenter's contention that the NO_X exemptions were mistaken or unjustified, although the issue is now moot in any case. We refer the commenter to our rulemaking approving the NO_X exemptions (61 FR 2438, January 26, 1996, and 61 FR 7218, February 27, 1996), and response to comment #3 above concerning our position for granting the exemptions. The EPA also disagrees that the rescission will increase pollution in the BR area and refer the commenter to our response to comment #3 of this document.

In this action, EPA is rescinding the NO_X exemptions. Therefore, the commenter's concern about EPA's granting the exemptions is misplaced. Seven years have elapsed since the LDEQ's previous modeling demonstration which showed that additional NO_X reductions were not needed for BR area's attainment, and the most recent modeling events demonstrating that control of NO_X emissions will contribute to attainment in the BR area. The pollution control technology, including air modeling, is a dynamic and evolving field. The model used by the LDEQ to support its request for approval of the NO_X waiver was Urban Airshed Model (UAM) IV, which was an EPA-approved photochemical grid model. The model used by the LDEQ to support its request for rescission of the NO_X waiver is UAM V, a more recently EPA-approved photochemical Grid Model. This represents a significant refinement in modeling technology. In addition, emission inventory methodologies/tools have been improved during this seven year period from when the State initially requested the NO_X exemptions. The commenter also fails to present or show any specific data corroborating the comment. In the absence of specific data or information, and for the other reasons stated above, we disagree with the commenter that the exemptions were mistakenly granted and that the

rescission will cause an increase in air pollution in the BR area.

Comment #5: LEAN commented that the LDEQ's incorrect representations to EPA have resulted in a rescission that will lead to the generation of emission credits from NO_X reductions that could be used to avoid NNSR for VOCs and to offset VOC increases.

Response to Comment #5: The EPA disagrees with the commenter's characterization of the impact of the rescission of the NO_X exemptions and Louisiana's offsets procedures. Our basis for this action is governed by section 182(f) and 182(b)(1) of the Act and is independent of any permitting procedures.

As stated in our response to comment #3 of this document, a major stationary source in the BR ozone nonattainment area now will need to comply with the new offset ratios (1.4 to 1 or 1.2 to 1) as a part of the NNSR procedures. *See* Table 1, section III in 67 FR 61260 (September 30, 2002). The offset ratios are greater than 1 to 1 and therefore will mean additional reductions in air emissions. In response to a similar comment EPA received during its rulemaking on Louisiana's revised NNSR regulations, EPA noted:

> 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 [of 67 FR 61260] 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.
>
> 67 FR 61260 at 61264 (September 30, 2002).

Furthermore, EPA has stated on several occasions that any emission reduction credits in Louisiana will have to be permanent, actual, surplus, quantifiable, and federally enforceable at the time of use as offsets. *See* 67 FR 60877 (September 27, 2002), 67 FR 60871 (September 27, 2002), and 67 FR 61260 (September 30, 2002). For the above reasons, EPA disagrees with the commenter's characterization of the impact of this final action.

Comment #6: LEAN commented that the LDEQ's intention is to allow facilities to avoid reductions in VOCs to the detriment of the health and welfare of residents of the BR area.

Response to Comment #6: We disagree with the commenter. The EPA believes the revised NNSR rule will improve air quality for all residents of the BR area. We refer the commenter to our responses to comments #3 and #4 of this document with regard to our position on the NO_X exemptions and related modeling issues. Our final action to rescind the NO_X exemptions is made pursuant to section 182(f) and 182(b)(1) of the Act. The commenter fails to provide any specific data to substantiate the comment concerning the health and welfare of residents of the BR area as a result of EPA's actions regarding the NO_X exemptions. Furthermore, the State has adopted and is implementing NO_X control measures not previously in the Louisiana's SIP. *See* 67 FR 60877 (September 27, 2002) for more information. We believe that implementation of these new NO_X control measures will strengthen Louisiana SIP, provide for additional safeguards to the health and welfare of residents of the affected parishes, and contribute to bringing the BR area into attainment with the ozone NAAQS.

Comment #7: LEAN commented that many or most of the facilities that benefitted from the NO_X exemptions are located in lower income communities with minority populations greater than the national average and that many of the residents live near the fence line of facilities or surrounded by multiple major polluters. The commenter contends that increased VOC emissions resulting from emission trading within the nonattainment area will result in environmental injustice and disparate impacts.

Response to Comment #7: The EPA disagrees that this action will result in environmental injustice or disparate impacts. We continue to encourage and support fact-finding efforts that involve local communities and the State of Louisiana. The EPA is committed to the principles of environmental justice to ensure that all Americans have equal access to the decision making process. We believe that the public process for the 1996 NO_X exemption document provided everyone the opportunity for meaningful involvement and met all of the legal requirements of section 110(a) of the Act and 40 CFR part 51. We believe the recent revisions to the SIP will improve air quality for all of the BR area.

We do not agree that the use of Inter-pollutant Trading (IPT) will overburden minority communities in the area. Louisiana's recent SIP revisions change only specific portions of the LDEQ regulations. The 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 Hazardous Air Pollutants (NESHAPs) in 40 CFR part 61 or part 63. Furthermore, LAC 33:III, Chapter 51 (Comprehensive Toxic Air Pollutant Emission Control Program) established ambient toxic air standards. Toxic Air Pollutants (TAPs) are a group of state-regulated chemicals consisting mainly of VOCs. The majority of TAPs are also Hazardous Air Pollutants (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 must be controlled by means of Maximum Achievable Control Technology (MACT). Furthermore, 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 industries involved in trades of VOC increases 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.

Analysis of impacts under existing authority and subsequent review by EPA under Title V of the Act (Permits), help to ensure that these rules will not result in disproportionately high and adverse environmental or human health effects on minority or low-income communities. As the Administrator stated in her Memorandum of August 9, 2001, ''Environmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities.'' This includes the Act, particularly the ''alternative sites analysis.'' Under section 173(a)(5) of the Act, an alternative sites analysis must be conducted for each NNSR permit, which requires consideration of, among other things, 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 cost imposed.

The LDEQ is also subject to the ''IT'' requirements which were articulated by the Louisiana Supreme Court in a case concerning the decision to issue a hazardous waste permit to the IT Corporation. *Save Ourselves, Inc.* v. *Louisiana Environmental Control Comm'n,* 452 So. 2d 1152 (La. 1984) (*IT*). Under the *IT* requirements, which would apply to NNSR offsets, LDEQ addresses whether:

1. The potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible;

2. A cost-benefit analysis of the environment impact costs balanced against the social and economic benefits of the project demonstrates that the latter outweighs the former; and

3. There are alternative projects or alternative sites or mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable. *In the Matter of Rubicon, Inc.,* 670 So.2d 475, 483 (La. App. 1996).

While the weighing of costs and benefits required under the *IT* decision has been interpreted as a ''rule of reasonableness,'' the *IT* Court and subsequent courts have noted that ''[t]he DEQ's role as the representative of the public interest does not permit it to act as an umpire passively calling balls and strikes for adversaries appearing before the Secretary; the rights of the public must receive active and affirmative protection at the hands of DEQ.'' *Matter of American Waste and Pollution Control Co.,* 642 So.2d 1258, 1262 (La. 1994) (internal punctuation omitted) (quoting *IT,* 452 So.2d at 1157).

In sum, we believe the disparate impacts alleged by LEAN 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. Moreover, EPA is entitled to review each Title V permit, and thus can object even in the absence of a citizen petition if a Title V permit fails to comply with applicable requirements of the Act or SIP. For example, in this instance environmental justice issues could be considered and addressed through section 173(a)(5), as discussed above. Thus, we may address environmental justice issues raised by NNSR permits as part of the Title V permit review process. Even where the Agency does not have authority to object to a Title V permit, it may consider environmental justice issues raised by the permit. Such a review may lead to EPA addressing such issues in another manner, such as investigation of Title VI complaints or coordination with States on appropriate resolutions. We are committed to ensuring compliance with the applicable requirements of the Act and the State's SIP through the permit review process, the State's standard for TAPs, which we believe are protective of human health and the environment. Since any trade would be linked to a nonattainment new source review permit, public notice would be mandatory and the public would have the opportunity to request a public hearing on the proposed project. Further, the information in the LDEQ banking database, defined at LAC 33:III.605, will be available to the public upon request. We believe that such opportunities do provide for effective public participation, enhance local communities' involvement, and address potential environmental justice concerns.

The commenter makes a number of statements about the demographics and health of poor and minority populations in the BR area. However, the commenter does not provide EPA with any concrete references or resources to support its position. For these reasons, we disagree with the commenter that this final action will result in environmental injustice or disparate impacts.

Comment #8: LEAN commented that delayed or incomplete implementation of Louisiana's hazardous air pollutant program and the proposed rescission of the NO_X exemption are LDEQ's first steps toward reducing the level of public protection from a wide array of toxics and carcinogens which qualify as VOCs. LEAN continues by commenting that recission of the NO_X exemption will allow inter-pollutant trading.

Response to Comment #8: We refer the commenter to our response to comment #7 of this document.

In addition, section 112 of the Act requires EPA to regulate emissions of HAPs from a published list of industrial sources referred to as ''source categories.'' As required under the Act, EPA has developed a list of source categories that must meet control technology requirements for these toxic air pollutants. The EPA has developed (or is developing) NESHAP regulations for all industries that emit one or more of the pollutants in significant quantities. We believe these efforts and the State's Chapter 51 rules have partly contributed to the significant reductions of VOC and toxic emissions, within the BR area, as presented in our response to comment #4 of this document. The Table of completed toxics regulations and relevant information is available at *http://www.epa.gov/ttn/atw/mactfnl.html.*

We are taking this final action pursuant to section 182(f) and 182(b)(1) of the Act. Although the rescission of the NO_X exemption may have implications for permitting, we are not taking action on IPT in this rulemaking. Our approval of Louisiana's IPT program was based on a recent photochemical grid modeling conducted for the BR area and was a separate rulemaking. *See* 67 FR 61260 (September 30, 2002).

Comment #9: LEAN commented that LDEQ and its constituents in the regulated community intended to ''scam'' EPA to avoid NNSR in the BR area by requesting the NO_X exemption, and that the State produced inconsistent theories, using the same modelers, about the cause of ozone nonattainment for approximately 8 years.

Response to Comment #9: We disagree with the commenter's characterization of the State's request for a NO_X exemption as a ''scam.'' We refer the commenter to our rulemaking actions on the NO_X exemptions and our response to comment #3 of this document for explanation of our bases for previously granting a NO_X exemption to Louisiana. We also refer the commenter to response to comment #4 of this document for an explanation of our position concerning the State's recently submitted air modeling.

The modeling protocol and scenarios were developed as a result of a series of meetings and public involvement processes. The result of the recent BR area modeling (showing that control of NO_X emissions contributes to attainment in the BR area) is consistent with findings for numerous nonattainment areas across the country (*e.g.,* Atlanta, Washington, DC, St. Louis, and Greater Connecticut). Based on our review and approval of the BR area photochemical grid modeling underlying the State's rescission request, EPA finds the State's request reasonable. *See* October 2, 2002 (67 FR 61786).

The commenter fails to provide any specific data to substantiate the concerns over presentation of the modeling theories or scenarios. In the absence of specific data contradicting the photochemical grid modeling that was recently conducted for the BR area, EPA considers the commenter's statement unsubstantiated, and disagrees with the commenter's position in this regard.

Comment #10: LEAN commented that the State intends to use credits from easy reductions in unregulated NO_X emissions to abrogate NNSR requirements for VOCs.

Response to Comment #10: The EPA disagrees with the commenter's interpretation that facilities which elect to implement NO_X RACT would generate reductions eligible for use as emission offsets and abrogate NNSR for VOCs. We also refer the commenter to response to comment #5 of this document with respect to its contention that the rescission will allow facilities to avoid NNSR requirements.

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 BR area and its Region of Influence. We approved the revised NO_X rules on September 27, 2002 (67 FR 60877). These NO_X rules require 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 that affected categories of NO_X-generating facilities may need to procure, calibrate and implement RACT. 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 Emission Reduction Credits (ERCs) and cannot offset VOC emissions by early NO_X RACT implementation. Furthermore, emissions decreased by a voluntary action must be permanent in order to meet the surplus ERC criteria. Because the NO_X RACT 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.

The State has adopted and we have approved new NO_X control measures not previously in the Louisiana's SIP. *See* September 27, 2002 (67 FR 60877). These NO_X control measures meet the Act's requirements for RACT. *See also,* our July 23, 2002 (67 FR 48095), and July 31, 2002 (67 FR 49647) proposed rulemaking documents. The EPA defines RACT as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. We believe that implementation of these NO_X control measures will strengthen the Louisiana SIP. As previously noted in this document, any ERCs must be permanent, actual, surplus, quantifiable, and federally enforceable at the time of use as an offset. For these reasons, we disagree with the commenter.

Comment #11: LEAN commented that rescission of the NO_X exemption should not be used to create NO_X ERCs or offsets that would not have existed if EPA had not granted the NO_X exemption.

Response to Comment #11: As stated previously, in our May 7, 2002 (67 FR 30638) proposal, in granting the NO_X exemption, EPA reserved the right to reverse the approval of the exemption if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emission controls. Photochemical grid modeling recently conducted for the BR area SIP indicates that control of NO_X sources will contribute to the BR area's attainment of the ozone NAAQS. The State of Louisiana, therefore, requested that EPA rescind the NO_X exemption based on this new modeling. We believe that the State has adequately demonstrated that additional NO_X reductions will contribute to attainment of ozone NAAQS. The State of Louisiana is not the only state that has requested EPA to rescind its NO_X waiver based on updated photochemical grid modeling information. We reiterate that any emission reduction credits in Louisiana will have to be permanent, actual, surplus, quantifiable, and federally enforceable at the time of use as offset. For practical purposes, to refrain from introducing additional uncertainties and variables, and to minimize inconsistencies, the changes (increases or decreases) in NO_X emissions will need to adhere to applicable rules and regulations instead of becoming a function of an arbitrary and variable baseline level for NO_X based on what such emissions would/could have been 8 years or so ago, had no exemptions been issued. Furthermore, upon rescission of the NO_X exemptions, the State will be required to implement the applicable requirements of the Act for control of NO_X emissions, including RACT, NNSR, vehicle I/M, banking, and general and transportation conformity. Rescission of the NO_X exemption and implementation of the State's newly promulgated NO_X RACT regulations will strengthen the existing Louisiana SIP. Therefore, we disagree with the commenter's position in this regard.

This concludes our responses to the written comments we received concerning this rulemaking.

5. Where Can I Find Background Information on the Exemptions?

To find information on the proposed rescission of the section 182(f) and 182(b)(1) NO_X exemptions for the BR area you can refer to our May 7, 2002 (67 FR 30638) publication. To find information on the approval of the section 182(f) and 182(b)(1) NO_X exemptions you can refer to our January 26, 1996 (61 FR 2438), and February 27, 1996 (61 FR 7218) rulemakings. To find information on the proposed approval of the section 182(f) and 182(b)(1) NO_X exemptions you can refer to our August 18, 1995 (60 FR 43100), and October 6, 1995 (60 FR 52349) rulemakings. A copy of the recently completed modeling, NO_X controls and NNSR regulations, and I/M SIP revision that Louisiana submitted to EPA are available from EPA and LDEQ at the addresses provided above.

6. What Areas in Louisiana Will Today's Rulemaking Affect?

The following table contains a list of parishes affected by today's rulemaking.

Rule provision	Affected parishes
Rescission of NO_X Exemptions.	Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge

If you are in one of these Louisiana parishes, you should refer to the Louisiana NO_X rules to determine if and how today's action will affect you.

7. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, [58 **Federal Register** 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order 12866, entitled ''Regulatory Planning and Review.''

The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

C. 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.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has less than 750 employees and is a major source of NO_X; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

I certify that this action will not have a significant economic impact on a substantial number of small entities. SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing.

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 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 the approval action promulgated 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 pre-existing 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.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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. The 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 rule will 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, because it merely approves 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not

have tribal implications, as specified in Executive Order 13175. The emissions sources affected by today's rulemaking action are not located within the Indian tribal nations; therefore, this rule will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

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 prior to 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). This rule will be effective June 4, 2003.

K. Petitions for Judicial Review

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 July 7, 2003. 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, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 25, 2003.

Christine Todd Whitman,

Administrator.

■ 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. § 52.992 is amended by adding paragraph (e) to read as follows:

§ 52.992 Areawide nitrogen oxides (NO_X) exemptions.

* * * * *

(e) On September 24, 2001, and on December 31, 2001, the LDEQ requested that EPA rescind the Baton Rouge section 182(f) and 182(b)(1) NO_X exemptions that were approved by EPA, and published in the **Federal Register** on January 26, 1996 (61 FR 2438), and February 27, 1996 (61 FR 7218). The State based its request on photochemical grid modeling recently performed for the Baton Rouge State Implementation Plan (SIP) which indicates that controlling NO_X sources will assist in bringing the Baton Rouge area into attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. On May 7, 2002, EPA proposed approval of the State's request to rescind both NO_X exemptions. Based on our review of the State's request and the supporting photochemical grid modeling the NO_X exemptions are rescinded on May 5, 2003.

[FR Doc. 03–10888 Filed 5–2–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN152–1a; FRL–7481–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to volatile organic compound (VOC) regulations in 326 Indiana Administrative Code (IAC) 8–1–2. Indiana submitted a request for this State Implementation Plan (SIP) revision on October 21, 2002, and provided additional material to EPA on January 10, 2003. This revision affects miscellaneous metal coating operations performing dip or flow coating. One change would enable dip and flow coating operators to use a rolling 30-day average to meet VOC content limits, instead of the current daily compliance requirement. EPA has determined that the extended averaging period is more practical for these sources because of the difficulties associated with intermittently adding solvent and the higher transfer efficiency associated with dip and flow coating operations. Solvent is intermittently added to the coating tank to maintain proper viscosity. Dip and flow coating generally has a higher transfer