

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) 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 the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. 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 December 23, 1996. Filing a petition for reconsideration by the Administrator of this final rule pertaining to EPA's approval of Allegheny County's provisions for blast furnace slips 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 2, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(100) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(100) Revisions to Article XX (Air Pollution Control) of the Allegheny County Health Department Rules and Regulations submitted on September 25, 1989 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by Reference

(A) Letter of September 25, 1989 from the Pennsylvania Department of Environmental Resources transmitting revisions to Article XX (Air Pollution Control) of the Allegheny County Health Department Rules and Regulations governing visible emissions.

(B) Revision to Article XX, Section 401.B (Visible Emissions-Exclusion) and deletion of Article XX, Section 518 (Blast Furnace Slips), effective July 1, 1989.

(ii) Additional Material

(A) Remainder of September 25, 1989 State submittal pertaining to Article XX, Sections 401 and 518.

[FR Doc. 96-27001 Filed 10-21-96; 8:45 am]

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40 CFR Part 52

[LA-23-1-6871a; FRL-5636-6]

Approval and Promulgation of State Implementation Plan; Louisiana; 15 Percent Rate-of-Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving a revision to the Louisiana State Implementation Plan (SIP) for the purpose of satisfying the 15 percent rate-of-progress requirements of the Clean Air Act (Act) which will aid in ensuring the attainment of the national ambient air quality standard (NAAQS) for ozone.

DATES: This "direct final" rule is effective December 23, 1996 unless adverse comments are received by November 21, 1996. If the effective date is delayed, timely notice will be published in the Federal Register (FR).

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Regional Office listed below. Copies of the documents relevant to this final action are available for public inspection during normal business hours at the following locations. 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, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7214.

Louisiana Department of Environmental Quality, Office of Air Quality and Radiation Protection, H. B.

Garlock Building, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana 70810.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne McDaniels, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7254.

SUPPLEMENTARY INFORMATION:**I. Background**

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act; Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7617q. Section 182(b)(1) of the Act requires all ozone nonattainment areas classified as moderate and above to submit a SIP revision by November 15, 1993, which describes, in part, how these areas will achieve an actual reduction in emissions of volatile organic compounds (VOC) of at least 15 percent during the first six years after enactment of the Act (November 15, 1996). Emissions and emissions reductions shall be calculated on a typical weekday basis for the "peak" 3-month ozone period (generally June through August). In Louisiana, the Baton Rouge ozone nonattainment area is classified as "serious" and is subject to the section 182(b)(1) 15 percent rate-of-progress requirements. The Baton Rouge ozone nonattainment area is comprised of the following parishes: East Baton Rouge, West Baton Rouge, Iberville, Ascension, Livingston, and Pointe Coupee.

The 15 percent VOC emissions reduction required by November 15, 1996, is defined within this document as "rate-of-progress" (ROP). The SIP revision that illustrates the plan for the achievement of the emissions reductions is defined in this document as the "15 Percent ROP Plan."

II. Analysis of the Submittal

On December 15, 1995, the Governor of Louisiana submitted to EPA a revision to the SIP to meet the 15 percent ROP requirements. This submittal superseded previous 15 Percent ROP Plans that had been submitted to EPA on November 4, 1993; November 10, 1994; and May 19, 1995. (A detailed chronology and description of these earlier submittals is provided in the Technical Support Document (TSD) to this action, which is available from EPA's Region 6 Office listed above.) The EPA deemed the December 15, 1995,

submittal administratively complete on January 25, 1996.

The EPA has reviewed the State's submittal for consistency with the requirements of EPA regulations. A summary of EPA's analysis is provided below. More detailed support for approval of the State's 15 Percent ROP Plan is contained in the TSD.

A. Accurate and Current 1990 Base Year Emissions Inventory

Sections 172(c)(3) and 182(b)(1) of the Act require that nonattainment plan provisions include a comprehensive,

accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the approval of such inventories is necessary for an area's Rate-of-Progress Plans and the Attainment Demonstration, the emissions inventory must be approved prior to or with the 15 Percent ROP Plan submission.

The EPA approved Louisiana's 1990 base year inventory on March 15, 1995 (60 FR 13911). In the 15 Percent ROP Plan submittal, the State has made minor revisions to the approved 1990

base year VOC inventory for Baton Rouge. The point source inventory changes are the result of receiving updated 1990 actual emissions information from several facilities, conducting additional rule effectiveness studies, and deleting non-VOC emissions that were erroneously included in the approved base year inventory. The on-road and non-road mobile sources, area source, and biogenic source inventories are unchanged from the approved inventory. The revised 1990 base year VOC emissions inventory is as follows:

BATON ROUGE, LOUISIANA, 1990 BASE YEAR INVENTORY
[Ozone Seasonal VOC Emissions (Tons/Day)]

Point source emissions	Area source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic emissions	Total
115.40	26.30	55.50	23.20	120.91	341.31

In this document, EPA is approving the above revisions to the 1990 base year VOC emissions inventory for the Baton Rouge ozone nonattainment area. (It should be noted that, in the 15 Percent ROP Plan, these revised 1990 base year VOC inventory numbers have been rounded to the nearest 10th of a decimal place and the non-road mobile source and area source emissions have been combined.)

B. Calculation of the Adjusted Base Year Inventory

The Act specifies the emissions baseline from which the 15 percent reduction is calculated. This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(D) excludes from the baseline the emissions that would be eliminated by Federal Motor Vehicle Control Program (FMVCP) regulations promulgated by January 1, 1990, and Reid vapor pressure (RVP) regulations (55 FR 23666, June 11, 1990), which require maximum RVP limits in nonattainment areas during the peak ozone season.

The adjusted base year inventory is determined by starting with the emissions inventory, and then removing all biogenic emissions as well as emissions from outside of the designated nonattainment boundary. The resulting inventory is termed the rate-of-progress base year inventory. The rate-of-progress base year inventory is then adjusted by removing the expected FMVCP and RVP reductions in order to derive the adjusted base year inventory.

To estimate the expected reductions from FMVCP standards and the RVP restrictions, the State used EPA's MOBILE5a emission factor model. The

RVP was reduced from 8.3 pounds per square inch (PSI) to 7.8 PSI to estimate the reductions from RVP restrictions. To determine the effect of FMVCP standards, the State calculated emissions first using 1990 vehicle miles traveled (VMT) and 1990 MOBILE5a emission factors, and then estimated the emissions using the 1990 VMT and the 1996 MOBILE5a emission factors. The plan includes adequate documentation on how the MOBILE5a model was run to calculate the expected emission reductions from FMVCP and RVP. As specified by section 182(b)(1)(B) of the Act, preenactment banked emission credits were not included in Louisiana's emissions inventory.

Provided below is a tabular summary of the emission inventories calculated above.

Emissions inventory	Tons per day
A. 1990 Base Year Emissions Inventory	341.3
B. 1990 Rate-of-Progress Inventory	220.4
C. Emission Reductions from the Pre-1990 FMVCP and Phase II RVP Expected by 1996	22.2
D. 1990 Adjusted Base Year Inventory (B-C)	198.2

C. Required Reductions

The 1990 adjusted base year inventory is multiplied by 0.15 to calculate the required 15 percent ROP emission reductions. Louisiana's plan must provide for at least a 29.7 ton per day (TPD) reduction, net of growth, in VOC emissions. Under section 182(b)(1)(D) of the Act, the following reductions are not creditable towards the ROP reductions:

(1) FMVCP regulations promulgated by January 1, 1990; (2) RVP regulations; (3) reasonably available control technology (RACT) corrections; and (4) inspection and maintenance (I/M) corrections. (The TSD provides a detailed explanation of the noncreditable reductions.)

Louisiana has calculated the noncreditable reductions to be 23.5 TPD. Thus, the 1996 total expected reductions in the plan are the sum of the 15 percent ROP reduction requirement (29.7 TPD) and the expected reductions from the four noncreditable programs (23.5 TPD), or 53.2 TPD.

Louisiana has followed EPA guidance in calculating the 1996 total expected reductions for the nonattainment area, documenting at each step the assumptions made and the origin of the numbers used in the calculations.

The target level of emissions for 1996, therefore, is the 1990 rate-of-progress base year inventory less the 1996 total expected reductions, or 167.2 TPD.

D. Projected Emissions Inventory

A projection of 1996 anthropogenic emissions is required for the 15 percent rate-of-progress calculation. The calculation is made by multiplying the 1990 rate-of-progress base year inventory by factors which estimate growth from 1990 to 1996. (A specific growth factor for each source type in the inventory is required since sources typically grow at different rates.) The difference between the 1990 rate-of-progress base year inventory figure and the 1996 emissions projection is the emissions growth estimate.

The projected growth in point source emissions is a negative 1.8 TPD. Area source emissions growth is projected to

be .73 TPD. The on-road mobile sources emissions growth estimate is 3.8 TPD. Non-road mobile emissions growth is estimated at 1.07 TPD. Total growth for the four source categories is 3.8 TPD.

In the 15 Percent ROP Plan submittal, Louisiana documented the growth factors that were used to project the 1996 emissions. The growth factors used are consistent with EPA's guidance for projecting emissions.

E. Total Required Reductions

The total required reductions for the area are the difference between the 1996 projected emissions (224.0 TPD) and the target level of emissions for 1996 (167.2 TPD), or 57.0. The State's 15 Percent ROP Plan must provide for a minimum of 34.8 TPD in reductions. The 34.8 TPD consists of the 15 percent ROP reduction requirement (29.7 TPD), the I/M correction (1.3 TPD), and growth offset (3.8 TPD). (The State determined that no significant reductions resulted from the RACT fix-up.) The FMVCP and RVP reductions (22.2 TPD) account for the remainder of the total required reductions.

F. Control Measures

1. Stage II Vapor Recovery: This measure requires the installation and operation of vapor recovery equipment on gasoline pumps to reduce the emissions during refueling. The State's stage II vapor recovery regulation is found in Title 33, Part III, Chapter 21, section 2132 of the Louisiana Administrative Code (LAC:33:III.2132). The EPA approved this regulation in the Federal Register on March 25, 1994 (59 FR 14112). The EPA agrees with the projected reductions from this control measure in the Baton Rouge nonattainment area and is approving the reductions towards the 15 percent ROP requirement as being permanent and enforceable.

2. Vents to Flare: Louisiana's waste gas disposal regulation (LAC 33:III.2115) requires that emissions from vents be controlled. The 15 Percent ROP Plan claims credit for reductions that have occurred at four companies (Dow Chemical, Exxon Plastics, Exxon Chemical, and Sid Richardson) through compliance with the State rule. Regulation 2115 has already been approved into the SIP, most recently on July 25, 1996 (61 FR 38590), and is, therefore, Federally enforceable. The EPA is crediting the reductions from the rule towards the 15 percent ROP requirement as being permanent and enforceable.

3. Marine Vapor Recovery: Louisiana's marine vapor recovery regulation, LAC 33:III.2108, was

adopted to control emissions from the loading of VOC in barges and tankers. The regulation controls emissions from loading facilities with greater than 100 TPD of emissions and is based on the existing rules for land-based VOC loading. The rule contains the appropriate test methods, monitoring and recordkeeping requirements to make the rule enforceable. The EPA is crediting the reductions from the rule towards the 15 percent ROP requirement as being permanent and enforceable, and approving the regulation into the SIP.

4. Tank Fitting Controls: Louisiana added requirements to its VOC storage regulation (LAC 33:III.2103) to control emissions from guidepole wells and stilling well systems in external floating roof storage tanks. The State is taking credit in the 15 Percent ROP Plan for reductions resulting from compliance with the revised regulation. The State has identified five facilities (Exxon Refinery, Exxon Chemical, Placid Refinery, Dow Chemical, and Cosmar) with a total of 125 affected tanks that will have controls implemented before November 1996.

The EPA is approving the revisions to regulation 2103 into the SIP to make them Federally enforceable. The EPA is also approving the reductions from the rule towards the 15 percent ROP requirement as being permanent and enforceable.

5. Fugitive Emissions Controls: This control measure tightens leak detection and repair requirements for petroleum refineries, natural gas processing plants, the synthetic organic chemical manufacturing industry, the methyl tertiary butyl ether manufacturing industry, and the polymer manufacturing industry.

The State's regulation, Fugitive Emission Control for Ozone Nonattainment Areas, LAC 33:III.2122, lowers leak screening levels for valves, pumps and compressors. In addition, the rule adds monitoring requirements for agitators and requires weekly inspections of connectors for leaks.

The EPA agrees with the projected reductions from this control measure in the Baton Rouge nonattainment area and is approving the reductions towards the 15 percent ROP requirement as being permanent and enforceable. In addition, EPA is approving regulation 2122 into the SIP.

6. Federal Regulations: 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP)), subpart FF requires the control of benzene emissions from wastewater streams. In the process of controlling the benzene emissions, other VOC

emissions are also controlled. In the 15 Percent ROP Plan, Louisiana has identified three facilities (Exxon Refinery, Exxon Chemical, and Union Texas) that have installed controls in response to these regulations resulting in VOC emissions reductions.

In addition, Louisiana is taking credit in the 15 Percent ROP Plan for volatile organic liquid (VOL) storage tank upgrades. Exxon Refinery removed several existing tanks from service and replaced them with new tanks. The new tanks were required to meet New Source Performance Standards (NSPS), subpart Kb requirements for VOL storage vessels. These upgrades to the emissions controls resulted in permanent emissions reductions. Similarly, Dupont modified some of its tankage, thus triggering the NSPS control requirements.

The EPA is approving these reductions resulting from compliance with the Federal benzene waste operations NESHAP and the VOL storage vessels NSPS towards the 15 percent ROP requirements as being permanent and enforceable.

7. Compliance Orders: Louisiana has adopted regulations governing major sources of toxic air pollutants. Many of the pollutants required to be reduced by the State's air toxics regulations are VOC. Per the regulations, sources are expected to have emissions controls in place by the end of 1996. The State has not submitted its toxics regulations to EPA for approval into the State Implementation Plan.

In order for the emissions reductions resulting from compliance with the State's toxics rules to be approvable, EPA required the State to submit, as part of the 15 Percent ROP Plan, an enforceable mechanism to ensure that the VOC reductions would be achieved by November 15, 1996.

Accordingly, the State issued administrative orders to five facilities (CosMar Chemical, Vulcan Chemical, Shell Chemical, Uniroyal Chemical, and BASF Corporation). The administrative orders were submitted as part of the 15 Percent ROP Plan submittal for approval into the SIP. The orders include appropriate test methods, monitoring and recordkeeping requirements to make them enforceable. The EPA is approving the orders into the State Implementation plan, and approving the reductions towards the 15 percent ROP requirement.

8. Permits: Emission reductions were obtained from two facilities (Allied Signal and Georgia Pacific) from revisions to their State permits. The permits were issued pursuant to the State's SIP-approved permitting

program and are, therefore, Federally enforceable. The EPA reviewed the permits to ensure they contained appropriate test methods, monitoring, and recordkeeping requirements to render them enforceable. The EPA is, therefore, approving the reductions from the permits towards the 15 percent ROP requirement.

9. Other Reductions: Louisiana's 15 Percent ROP Plan includes reductions from implementation of tank vent controls at two facilities. Exxon Chemical began venting emissions from 10 storage tanks to a vent recovery system. These emissions are enforceable through LAC 33:III.2103. Ciba-Geigy also installed controls on tank vents. These emission reductions are enforceable under LAC 33:III.2115.

The EPA is approving these reductions resulting from compliance with the State regulations towards the 15 percent ROP requirement.

G. RACT Determination

The EPA has defined RACT as the lowest level of emissions that can

reasonably be achieved considering technical and economic issues. Section 182(b)(2) of the Act requires States to adopt RACT rules for three general groups of sources: (1) Those covered by post-enactment Control Technique Guidelines (CTG) documents; (2) those covered by pre-enactment CTG documents; and (3) all other major stationary sources of VOC. A CTG is a document issued by EPA that examines the technical feasibility and costs of controls for a particular source type and establishes a presumptive level of control that is considered RACT. The EPA has not issued a number of the post-enactment CTG documents. Instead, EPA has issued Alternative Control Technique (ACT) documents. These documents provide much of the same information as the CTG documents pertaining to control costs and feasibility. However, instead of establishing a presumptive norm for RACT, these documents provide options for control. A State can use this information to establish a RACT level of

control appropriate for the circumstances in the State. When EPA failed to issue a CTG document for VOL storage by November 15, 1993, the responsibility shifted to the State to submit a non-CTG RACT rule under section 182(b)(2)(C) for major non-CTG sources. (For a discussion of the legal rationale, see Appendix E of the General Preamble to Title I of the Clean Air Act (57 FR 13498, April 16, 1992).) The EPA issued an ACT for VOL storage in January 1994.

Louisiana's VOC storage regulation (LAC 33:III.2103) is generally consistent with EPA's guidance contained in the ACT for VOL storage. Therefore, EPA is approving the regulation as meeting the RACT requirements of section 182(b)(2)(C) for VOL storage.

The following table summarizes the total reductions identified in the Louisiana 15 Percent ROP Plan to satisfy the 15 percent (net of growth) reductions requirement:

SUMMARY OF APPROVED EMISSION REDUCTIONS

Louisiana 15 percent ROP plan required reductions (excluding RVP/FMVCP)	(tons/day)
15 Percent ROP Reduction	29.7
I/M Correction	1.3
RACT Correction	0.0
Growth	3.8
Total	34.8
Reductions In Plan:	
Stage II Vapor Recovery	3.4
Vents to Flares	3.7
Marine Vapor Recovery	8.6
Tank Fitting Controls	7.9
Fugitive Emission Controls	10.4
Federal Rules (Wastewater NESHP, VOL Storage NSPS)	1.5
Compliance Orders/Permits	1.0
Other (Tank Vent Recovery, Secondary Roof Seal on Tank)	0.9
Total	37.4
Surplus Reductions (To Be Carried Over To Post-1996 Rate-of-Progress Plan)	2.6

H. Contingency Measures

Section 172(c)(9) of the Act requires moderate and above areas to adopt and submit contingency measures to be implemented if ROP is not achieved or if the standard is not attained by the applicable attainment date. In the General Preamble to Title I of the Act, EPA interpreted the Act to require States with moderate and above ozone nonattainment areas to include contingency measures in their November 15, 1993, submittals. The contingency measures generally must provide reductions of 3 percent of the emissions from the adjusted base year inventory. While all contingency

measures must be fully adopted rules or measures, the State can use these measures in two different ways. The State can use its discretion to implement any contingency measures it wants before 1996. Alternatively, the State may decide not to implement a measure until the area has failed to either make ROP or attain the NAAQS. In that situation, the reductions must be achieved in the year following that in which the failure has been identified.

Louisiana included its emissions banking regulations as the section 172(c)(9) contingency measures in the 15 Percent ROP Plan. The EPA will be acting upon the banking regulations in its rulemaking action on the Louisiana

Post-1996 ROP Plan and Attainment Demonstration SIP, which was submitted to EPA on December 22, 1995. The EPA considers it appropriate to act on the contingency measure in the context of that rulemaking action because the banking regulation has also been submitted for the contingency measures in the Post-1996 ROP Plan. In addition, the banking regulation allows the use of post-1990 shutdown credits for emissions offsets, and EPA has established certain requirements that must be met regarding the approval status of the Attainment Demonstration in order for certain shutdown credits to be used for emissions offsets.

A more detailed description of the contingency measure is provided in the TSD.

I. Rate-of-Progress Demonstration

The control measures in Louisiana's 15 Percent ROP Plan have already been implemented, or will be implemented, by November 15, 1996.

J. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) of the Act, and page 13556 of the General Preamble). The EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation (see page 13541 of the General Preamble). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements of the SIP (see section 110(a)(2)(C) of the Act).

The 15 percent ROP control measures have been reviewed by EPA and determined to be enforceable by the State. Several of the measures are already Federally enforceable. The remaining measures will be made Federally enforceable in this rulemaking action by incorporation into the SIP.

IV. Final Action

The EPA is approving the Louisiana 15 Percent ROP Plan required by section 182(b)(1) of the Act and the State's accompanying orders and regulations. The EPA is also approving a revision to the 1990 base year VOC emission inventory for the Baton Rouge ozone nonattainment area. In addition, EPA is approving LAC 33:III.2103, Storage of Volatile Organic Compounds, as meeting the section 182(b)(2) RACT requirements for VOL storage.

The EPA is not acting on the section 172(c)(9) contingency measures contained in the 15 Percent ROP Plan submittal in this document. The contingency measures will be addressed in a future rulemaking action on that subject.

In addition, by virtue of approving the 15 Percent ROP Plan, EPA is also approving the motor vehicle emissions budget for VOC. For the purpose of transportation conformity determinations, final approval of this 15 Percent ROP Plan revision would eliminate the need for a build/no-build test and less-than-1990 emissions test for VOC for the 1996 analysis year. However, for the 1996 analysis year and later, conformity determinations

addressing VOC must demonstrate consistency with this plan revision's motor vehicle emissions budget. In addition, for years beyond 1996, conformity determinations addressing VOC must demonstrate consistency with this plan revision's VOC motor vehicle emissions budget, the VOC motor vehicle emissions budget in the submitted (but not yet approved) Attainment Demonstration, and satisfaction of the build-no-build test and less-than-1990 emissions test for VOC (until the Attainment Demonstration is approved). Conformity determinations addressing nitrogen oxides (NO_x) must demonstrate conformity with the NO_x motor vehicle emissions budget in the submitted (but not yet approved) Attainment Demonstration. The build/no-build test for NO_x for the 1996 analysis year and beyond is not required because EPA has approved a section 182(b)(1) transportation conformity NO_x exemption for the Baton Rouge ozone nonattainment area (61 FR 7218, February 27, 1996).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 23, 1996, unless, by November 21, 1996 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 23, 1996.

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.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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).

C. 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 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 preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. 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).

E. 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 23, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Louisiana was approved by the Director of the FR on July 1, 1982.

Dated: September 30, 1996.

Jerry Clifford,

Acting Regional 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. 7401-7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(71) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(71) A revision to the Louisiana SIP addressing the 15 percent rate-of-progress requirements was submitted by the Governor of Louisiana by cover letter dated December 15, 1995. This revision, submitted to satisfy the requirements of section 182(b) of the Clean Air Act (Act), will aid in ensuring that reasonable further progress is made towards attaining the national ambient air quality standard (NAAQS) for ozone.

(i) Incorporation by reference.

(A) Revisions to LAC, Title 33, Environmental Quality, Part III. Air; Chapter 21. Control of Emissions of Organic Compounds, Subchapter A. General; section 2108. Marine Vapor Recovery, paragraphs B.1., B.2., B.3., B.3.a. through B.3.d., B.4.a., B.4.b., B.5., B.6., D.1.a., D.1.a.i., D.1.a.ii., D.1.b., D.2., D.3., D.4.a., D.4.b., D.4.c., D.4.c.i., D.4.c.ii., D.4.d., D.4.e., D.4.e.i., D.4.e.ii., D.4.f., D.4.g., E.2., E.2.a. through E.2.c., F.1., F.2., F.3., G.1., G.2., as adopted by LDEQ on October 20, 1988.

(B) Revisions to LAC, Title 33, Environmental Quality, Part III. Air; Chapter 21. Control of Emissions of Organic Compounds, Subchapter A. General; section 2108. Marine Vapor Recovery, paragraphs A., B. Definitions-Barge, Crude Oil, Gasoline, Ship, C., C.1., C.2., C.3., C.3.a. through C.3.d. (note: paragraphs B.1., B.2., B.3., and B.3.a. through B.3.d., as adopted on October 20, 1988, were moved to C.1., C.2., C.3., and C.3.a. through C.3.d. without repromulgating), C.4., C.4.a., C.4.b., C.5., C.6. (note: paragraphs B.4.a., B.4.b., B.5., and B.6., as adopted on October 20, 1988, were moved to C.4.a., C.4.b., C.5., and C.6. without repromulgating), D.1., D.1.a. through D.1.c., D.2., D.2.a. through D.2.c., D.3., E., E.1., E.1.a., E.1.a.i., E.1.a.ii., E.1.b., E.2., E.3. (note: D.1.a., D.1.a.i., D.1.a.ii., D.1.b., D.2., and D.3., as adopted October 20, 1988, were moved to E.1.a., E.1.a.i., E.1.a.ii., E.1.b., E.2., and E.3. without repromulgating), E.4., E.4.a., E.4.b., E.4.c., E.4.c.i., E.4.c.ii., E.4.d., E.4.e., E.4.e.i., E.4.e.ii., E.4.f., E.4.g. (note: D.4.a., D.4.b., D.4.c., D.4.c.i., D.4.c.ii., D.4.d., D.4.e., D.4.e.i., D.4.e.ii.,

D.4.f., and D.4.g., as adopted on October 20, 1988, were moved to E.4.a., E.4.b., E.4.c., E.4.c.i., E.4.c.ii., E.4.d., E.4.e., E.4.e.i., E.4.e.ii., E.4.f., and E.4.g. without repromulgating), E.5., F., F.1., F.2., F.2.a. through F.2.e. (note: E.2. and E.2.a. through E.2.c., as adopted on October 20, 1988, were moved to F.2. and F.2.a. through F.2.c. without repromulgating), G., G.1., G.2., G.3. (note: F.1., F.2., and F.3., as adopted October 20, 1988, were moved to G.1., G.2., and G.3. without repromulgating), H., H.1., H.2. (note: G.1. and G.2., as adopted on October 20, 1988, were moved to H.1. and H.2. without repromulgating), as adopted by LDEQ on November 20, 1990.

(C) Revisions to LAC, Title 33, Environmental Quality, Part III. Air; Chapter 21. Control of Emissions of Organic Compounds, Subchapter A. General; section 2122. Fugitive Emission Control for Ozone Nonattainment Areas, paragraphs A., A.1. through A.5., A.6., A.6.a. through A.6.d., B. Definitions-Connector, Good Performance Level, Heavy Liquid Service, Inaccessible Valve/Connector, In Vacuum Service, Light Liquid, Light Liquid Service, Liquid Service, Process Unit, Process Unit Shutdown, Unrepairable Component, C., C.1., C.1.a. through C.1.c., C.2. through C.5., D., D.1., D.1.a., D.1.a.i., D.1.a.ii., D.1.b., D.1.b.i. through D.1.b.v., D.1.c. through D.1.e., D.2., D.2.a., D.2.b., D.2.b.i. through D.2.b.iii., D.3., D.3.a. through D.3.d., D.4., D.4.a. through D.4.k., D.5., E.1.a. through E.1.f., E.2., E.3., E.3.a., E.3.a.i. through E.3.a.v., E.3.b., E.3.b.i. through E.3.b.v., F., F.1., F.2., F.2.a. through F.2.j., F.3., G., G.1. through G.13., as adopted by LDEQ on October 20, 1994.

(D) Revisions to LAC, Title 33, Environmental Quality, Part III. Air; Chapter 21. Control of Emissions of Organic Compounds, Subchapter A. General; section 2122. Fugitive Emission Control for Ozone Nonattainment Areas, paragraphs E., E.1., E.1.g., as adopted by LDEQ on November 20, 1994.

(E) Revisions to LAC, Title 33, Environmental Quality, Part III. Air; Chapter 21. Control of Emissions of Organic Compounds, Subchapter A. General; section 2103. Storage of Volatile Organic Compounds, paragraphs A., B., D.1., D.1.a. through D.1.d., D.2., D.2.a. through D.2.e., E., F., G., G.1. through G.4., H., H.1., H.2., H.2.a. through H.2.e., H.3., I., I.1., I.2., I.2.a. through I.2.c., I.3. through I.5., as adopted by LDEQ on December 20, 1994.

(F) Revisions to LAC, Title 33, Environmental Quality, Part III. Air;

Chapter 21. Control of Emissions of Organic Compounds, Subchapter A. General; section 2103. Storage of Volatile Organic Compounds, paragraphs C., D., D.3., as adopted by LDEQ on November 20, 1995.

(G) Revisions to LAC, Title 33, Environmental Quality, Part III. Air; Chapter 21. Control of Emissions of Organic Compounds, Subchapter A. General; section 2103. Storage of Volatile Organic Compounds, paragraph D.4., as adopted by LDEQ on December 20, 1995.

(H) Reasonable Further Progress Agreed To Order, dated December 16, 1994, issued by the Assistant Secretary of the State of Louisiana Department of Environmental Quality in the matter of BASF Corporation, Geismar, Louisiana.

(I) Reasonable Further Progress Agreed To Order, dated August 22, 1994, issued by the Assistant Secretary of the State of Louisiana Department of Environmental Quality in the matter of CosMar Company, Inc., Carville, Louisiana.

(J) Reasonable Further Progress Agreed To Order, dated September 26, 1994, issued by the Assistant Secretary of the State of Louisiana Department of Environmental Quality in the matter of Shell Chemical Company, Geismar, Louisiana.

(K) Reasonable Further Progress Agreed To Order, dated September 8, 1994, issued by the Assistant Secretary of the State of Louisiana Department of Environmental Quality in the matter of Uniroyal Chemical Company, Inc., Geismar, Louisiana.

(L) Reasonable Further Progress Agreed To Order, dated September 8, 1994, issued by the Assistant Secretary of the State of Louisiana Department of Environmental Quality in the matter of Vulcan Chemicals, Geismar, Louisiana.

(M) SIP narrative plan entitled, "Revision to the 15% Rate of Progress Plan and 1990 Emissions Inventory," dated December 28, 1995, page 11, Section 2.2, 1996 Target Level Emissions, first paragraph; page 23, Section 5, Table 2—Reductions in Plan; page 173, Appendix G, table—Reductions from Industrial Sources through 1996 Used for the 15% Requirement, which ends on page 174.

(ii) Additional materials.

(A) SIP narrative plan entitled, "Revision to 15% Rate of Progress Plan and 1990 Emissions Inventory," submitted by the Governor of Louisiana on December 15, 1995, except Section 6. Contingency Measures Documentation, Appendix M. Contingency Reductions Documentation, and Appendix N. Banking Regulations.

(B) Letter dated May 3, 1996, from Gustave Von Bodungen, Louisiana Department of Environmental Quality, to Thomas Diggs, U.S. Environmental Protection Agency, transmitting supplemental documentation for the 15 Percent Rate of Progress Plan.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 6 and 8

RIN 0925-AA15

Removal of Obsolete Patent Regulations

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is rescinding the regulations concerning inventions and patents generally and inventions resulting from research grants and contracts and fellowship awards, because the regulations are obsolete.

EFFECTIVE DATE: October 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Lambert, Office of the General Counsel, Building 31, Room 2B-50, 31 Center Dr MSC 2111, Bethesda, MD 20892-2111, telephone (301) 496-6043 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Bayh-Dole Act, 35 U.S.C. 200-212 (Public Law 96-517 (Dec. 12, 1980)) and implementing regulations issued by the Department of Commerce, 37 CFR Part 401, established Government-wide patent policies that superseded the HHS policies codified in 45 CFR Parts 6 and 8. Prior to the passage of the Bayh-Dole Act, HHS made determinations of ownership and disposition of inventions made under grants and contracts funded by HHS. The general policy was to obtain rights to inventions made with Federal funding and to dedicate such inventions, along with those of Government employees, to the public through publication or by providing licenses to Government-owned patents on a royalty-free, nonexclusive basis.

The Bayh-Dole Act adopted a different philosophy of patenting. Based on the premise that commercialization of inventions will best promote the public interest, the Bayh-Dole Act provides that small business and nonprofit recipients of Federal funds can elect to retain title to an invention, subject to a nonexclusive,

nontransferable, irrevocable, paid-up license to the Government to use and license others to use the invention for Government purposes. In 1983, by a memorandum to the Heads of Executive Departments and Agencies, President Reagan extended to all recipients of Federal funding the same right to elect title to inventions and that memorandum was reaffirmed in 1987 by Executive Order 12591.

The Bayh-Dole Act, and its implementing regulations at 37 CFR Part 401, have made obsolete the HHS regulations at 45 CFR Parts 6 and 8. In addition, 45 CFR Part 6 is obsolete because it does not accurately reflect the policies or organizational structure of HHS. Accordingly, this final rule rescinds HHS regulations that have been superseded by statutes, regulations and policies that provide for the transfer of Government-funded technology to the private sector through the elimination of Government control over inventions made under Federal grants and contracts. HHS is considering whether it is necessary to replace Parts 6 and 8 of title 45 CFR or whether new HHS regulations are unnecessary in light of the Department of Commerce regulations.

Notice, public comment, and delayed effective date have been waived for this amendment based on a finding of good cause. The parts being removed are obsolete, and their removal will not in any way affect funding recipients or others adversely.

Executive Order 12866

Executive Order No. 12866 requires that all regulatory actions reflect consideration of the costs and benefits they generate and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term "significant regulatory action" contained in section 3(f) of the Order, pre-publication review by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) is necessary. This rule was deemed "not significant" by OIRA.

Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), is not required.