

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Division

Nonattainment New Source Review Procedures
(LAC 33:III.504) (AQ326)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.504 (AQ326).

The Baton Rouge area (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) is currently designated as nonattainment with respect to the 1997 8-hour ozone NAAQS of 0.08 parts per million (ppm). Consequently, increases of NOX and VOC emissions are governed by Nonattainment New Source Review (NNSR) procedures under LAC 33:III.504. Under NNSR, owners or operators of new major stationary sources or major modifications must offset the emissions increase that would result from the proposed construction or modification by obtaining Emission Reduction Credits (ERC) banked in accordance with LAC 33:III.Chapter 6.

On August 30, 2011, EPA proposed to redesignate the Baton Rouge area to attainment of the 1997 ozone NAAQS (76 FR 53853). When this re-designation becomes effective, NNSR provisions, including those requiring offsets for significant NOX and VOC increases, will no longer be mandated by the Clean Air Act. However, another ozone standard will soon be implemented, and Baton Rouge will once again be designated as a nonattainment area.

On March 27, 2008, EPA lowered the ozone NAAQS from 0.08 ppm to 0.075 ppm (73 FR 16436); this standard became effective on May 27, 2008. However, on September 16, 2009, the agency announced that it would reconsider the ozone NAAQS. In concert with this decision, EPA stayed the 2008 standard with respect to designations. On January 19, 2010, EPA proposed that the level of the primary standard should instead be set within the range of 0.060 to 0.070 ppm (75 FR 2938). However, on September 2, 2011, President Obama “requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards.” Because the ozone standard will not be revisited for several years, EPA is moving ahead with certain required actions to implement the 2008 standard. Based on air quality data from 2008 – 2010, Baton Rouge will be designated as nonattainment. EPA expects to finalize area designations by “mid-2012.”

Therefore, based on EPA’s implementation schedule, Baton Rouge will be an attainment area for a short period of time. According to LAC 33:III.504.F.2, “all emission reductions claimed as offset credit must have occurred later than the date upon which the area was designated nonattainment.” Consequently, if this provision is not repealed, there will be no ERC available once the Baton Rouge area is formally designated as nonattainment under the 2008

ozone standard. The basis and rationale for this rule are to preserve ERC applied for or approved in accordance with LAC 33:III.Chapter 6 after Baton Rouge is formally designated as nonattainment under the 2008 8-hour ozone NAAQS. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on February 28, 2012, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ326. Such comments must be received no later than March 6, 2012, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-4068 or by e-mail to perry.theriot@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ326. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

Title 33**ENVIRONMENTAL QUALITY****Part III. Air****Chapter 5. Permit Procedures****§504. Nonattainment New Source Review (NNSR) Procedures**

A. - F.1. ...

2. ~~All emission reductions claimed as offset credit must have occurred later than the date upon which the area was designated nonattainment.~~Reserved.

F.3. - M.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), LR 38:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: AQ326

Person
Preparing
Statement: Bryan D. Johnston Dept.: Environmental Quality
Phone: (225) 219-3450 Office: Environmental Services
bryan.johnston@la.gov
Return
Address: 602 North Fifth Street Rule Title: Emission Offsets
Baton Rouge, LA 70821 (LAC 33:III.504.F.2)
Date Rule
Takes Effect: Upon Promulgation

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There will be no costs to directly affected persons or non-governmental groups as a result of the proposed rule. This rule will benefit owners or operators that currently possess or have applied for Emission Reduction Credits (ERC), because such ERC would remain creditable (subject to validation by LDEQ as being surplus, enforceable, permanent, and quantifiable prior to use as offsets) once the Baton Rouge area is formally designated as nonattainment under the 2008 ozone National Ambient Air Quality Standard (NAAQS). The magnitude of the benefit will be directly proportional to the amount of ozone season NO_x ERC, non-ozone season NO_x ERC, and VOC ERC each owner or operator holds, or has applied for.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector because of the proposed rule.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This rulemaking will repeal and reserve LAC 33:III.504.F.2.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The Baton Rouge area (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) is currently designated as nonattainment with respect to the 1997 eight-hour ozone NAAQS of 0.08 parts per million (ppm). Consequently, increases of NO_x and VOC emissions are governed by the Nonattainment New Source Review (NNSR) procedures under LAC 33:III.504. Under NNSR, owners or operators of new major stationary sources or major modifications must offset the emissions increase that would result from the proposed construction or modification by obtaining Emission Reduction Credits (ERC) banked in accordance with LAC 33:III.Chapter 6.

On November 30, 2011, EPA redesignated the Baton Rouge area to attainment of the 1997 ozone NAAQS, effective December 30, 2011. Therefore, on December 30, 2011, NNSR provisions, including those requiring offsets for significant NO_x and VOC increases, will no longer be mandated by the Clean Air Act. However, another ozone standard will soon be implemented, and Baton Rouge will once again be designated as a nonattainment area.

On March 27, 2008, EPA lowered the ozone NAAQS from 0.08 ppm to 0.075 ppm; this standard became effective on May 27, 2008. However, on September 16, 2009, the agency announced that it would reconsider the ozone NAAQS, delaying implementation of the 2008 standard. On January 19, 2010, EPA proposed that the primary standard should be set within the range of 0.060 to 0.070 ppm. Then on September 2, 2011, President Obama "requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards." The ongoing review of the 2008 ozone standard will not be completed for several years, and the EPA is now moving ahead with certain required actions to implement the 2008 standard. Based on air quality data from 2008 – 2010, the Baton Rouge area will be designated as nonattainment. The EPA expects to finalize area designations by "mid-2012."

Based on EPA's implementation schedule, the Baton Rouge area will be an attainment area for a short period of time (December 30, 2011, to "mid-2012"). According to LAC 33:III.504.F.2, "all emission reductions claimed as offset credit must have occurred later than the date upon which the area was designated nonattainment." Consequently, if this provision is not repealed, there will be no ERC available once the Baton Rouge area is formally designated as nonattainment under the 2008 ozone NAAQS. This rule is needed to preserve the ERC applied for or approved in accordance with LAC 33:III.Chapter 6.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The proposed rule will not result in any increase in the expenditure of funds.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?
- (a) Yes. If yes, attach documentation.
- (b) No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

There is no anticipated increase or decrease in costs to state agencies as a result of this proposed rule.

COSTS	FY 11-12	FY 12-13	FY 13-14
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR. POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

There is no anticipated increase or decrease in costs associated with the proposed rule. No increase or reduction in workload or additional paperwork is anticipated.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 11-12	FY 12-13	FY 13-14
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No funds are required to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

No impact on local governmental units is anticipated, including adjustments in workload and paperwork requirements.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

There are no costs or savings to local governmental units. Therefore, no funding is needed.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

There will be no effect on revenue collections of state or local governmental units from the proposed rule.

REVENUE INCREASE/DECREASE	FY 11-12	FY 12-13	FY 14-15
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No increase or decrease in revenues will be realized.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Owners or operators of stationary sources located in the Baton Rouge area (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) that have acquired and/or applied for the Emission Reduction Credits (ERC) in accordance with LAC 33:III.Chapter 6 will be affected by the proposed rule.

There will be no effect on costs, including workload adjustments and additional paperwork, as a result of the proposed action.

This rule will benefit owners or operators that currently possess or have applied for ERC because such ERC would remain creditable (subject to validation by LDEQ as being surplus, enforceable, permanent, and quantifiable prior to use as offsets) once the Baton Rouge area is formally designated as nonattainment under the 2008 ozone NAAQS. The magnitude of the benefit will be directly proportional to the amount of ozone season NO_x ERC, non-ozone season NO_x ERC, and VOC ERC each owner or operator holds, or has applied for.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There will be no impact on receipts or income resulting from the proposed rule.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no effect on competition or employment in the public or private sectors resulting from the proposed rule.