

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Division

Emission Reduction Credits (ERC) Banking Program
(LAC 33:III.603) (AQ353)

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.603 (AQ353).

LAC 33:III.Chapter 6 currently precludes sources located in EPA-designated attainment areas from participating in the emissions banking program. This rulemaking will allow owners or operators of stationary sources located in certain attainment areas to apply for emission reduction credits (ERC).

On December 17, 2014, the Environmental Protection Agency (EPA) proposed to revise the primary and secondary national ambient air quality standards (NAAQS) for ozone to a level within the range of 0.065 to 0.070 parts per million (ppm) (79 FR 75234). EPA is required by a federal court order to finalize its proposal no later than October 1, 2015.

Based on current (i.e., 2012 – 2014) design values, LDEQ anticipates that up to 17 parishes would be designated as ozone nonattainment areas should the standard be set at 0.070 ppm. If the final standard is less than 0.070 ppm, as many as 13 additional parishes could receive a nonattainment designation.

LAC 33:III.Chapter 6 currently precludes sources located in EPA-designated attainment areas from participating in the emissions banking program. Owners or operators of stationary sources located in the five parishes described above (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge) have had the ability to bank creditable reductions in NOX and VOC emissions.

In order to encourage prompt reductions in NOX and VOC emissions that will be needed to comply with the revised ozone NAAQS (and to address future scenarios analogous to this), LDEQ will amend Chapter 6 to allow an owner or operator of a stationary source located in an area currently designated as attainment, but which is not in compliance with a new or revised NAAQS, to bank creditable reductions in emissions of the noncompliant pollutant(s) realized on or after the date the new or revised NAAQS is promulgated. The basis and rationale for this rule are to allow owners or operators of stationary sources located in certain attainment areas to apply for ERC. 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.

This rule has no known impact on poverty as described in R.S. 49:973.

This rule has no known impact on providers as described in HCR 170 of 2014.

A public hearing will be held on July 29, 2015, 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 Deidra Johnson 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 AQ353. Such comments must be received no later than August 5, 2015, at 4:30 p.m., and should be sent to Deidra Johnson, 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 deidra.johnson@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 AQ353. 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 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits (ERC) Banking

§603. Applicability

A. Major stationary sources are subject to the provisions of this Chapter for the purpose of utilizing emission reductions as offsets in accordance with LAC 33:III.504. Minor stationary sources located in nonattainment areas may submit ERC applications for purposes of banking. Sources located in EPA-designated attainment areas may not participate in the emissions banking program, except as specified in Subsection C of this Section. Any stationary point source at an affected facility is eligible to participate.

B. ...

C. The owner or operator of a stationary source located in an EPA-designated attainment area, but which is not in compliance with a new or revised national ambient air quality standard, may apply to bank reductions in emissions of the noncompliant pollutant(s) realized on or after promulgation of the new or revised standard.

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 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 41:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: AQ353

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Return Address:	<u>602 North Fifth Street</u> <u>Baton Rouge, LA 70802</u>	Rule Title:	<u>Emission Reduction Credits (ERC)</u> <u>Banking Program</u> <u>LAC 33:III.603</u>
		Date Rule Takes Effect:	<u>Upon Promulgation</u>

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)

The proposed rule will allow owners or operators of stationary sources located in parishes that will be designated as nonattainment, with respect to the forthcoming revision to the national ambient air quality standard (NAAQS) for ozone, to apply for emission reduction credits (ERC). However, this action does not compel any stationary source to participate in the ERC banking program – it simply expands the areas in which such sources meet eligibility requirements. Therefore, it will have no effect on costs, including workload adjustments or additional paperwork.

After the effective date of the nonattainment designation, a stationary source that has banked creditable reductions as ERC may benefit in two ways. First, the source could use the ERC to offset the emissions increases associated with a major modification, as required by the nonattainment new source review (NNSR) program, LAC 33:III.504. Second, the source could sell the ERC to another source located (or proposing to locate) in the same nonattainment area.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector as a result 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).

LAC 33:III.Chapter 6 currently precludes stationary sources located in Environmental Protection Agency (EPA)-designated attainment areas from participating in the emissions banking program. The proposed rule will allow owners or operators of stationary sources located in certain attainment areas to apply for emission reduction credits (ERC).

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

On December 17, 2014, the EPA proposed to revise the primary and secondary national ambient air quality standards (NAAQS) for ozone to a level within the range of 0.065 to 0.070 parts per million (ppm) (79 FR 75234). EPA is required by a federal court order to finalize its proposal no later than October 1, 2015.

Based on current (i.e., 2012 – 2014) design values, LDEQ anticipates that up to 17 parishes would be designated as ozone nonattainment areas should the standard be set at 0.070 ppm. If the final standard is less than 0.070 ppm, 13 additional parishes could receive a nonattainment designation.

Because LAC 33:III.Chapter 6 currently precludes stationary sources located in EPA-designated attainment areas from participating in the emissions banking program, owners or operators of stationary sources located in five of the potentially impacted parishes (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge) have had the ability to bank creditable reductions in NO_x and VOC emissions.

In order to encourage prompt reductions in NO_x and VOC emissions that will be needed to comply with the revised ozone NAAQS (and to address future scenarios analogous to this), the proposed rule will amend Chapter 6 to allow an owner or operator of a stationary source located in an area currently designated as attainment, but which is not in compliance with a new or revised NAAQS, to bank creditable reductions in emissions of the noncompliant pollutant(s) realized on or after promulgation of the new or revised standard.

- 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.

No, 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?

No costs or savings to state agencies are anticipated as a result of the proposed rule.

COSTS	FY 15-16	FY 16-17	FY 17-18
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.

This question is not applicable.

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

SOURCE	FY 15-16	FY 16-17	FY 17-18
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 additional 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.

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

There will be no costs or savings to local governmental units, so no funding sources will be affected.

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?

No increase or decrease in revenues to state or local governmental units will be realized.

REVENUE INCREASE/DECREASE	FY 15-16	FY 16-17	FY 17-18
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.

The proposed rule will allow owners or operators of stationary sources located in parishes that will be designated as nonattainment with respect to the forthcoming revision to the ozone NAAQS to apply for ERC. However, this action does not compel any stationary source to participate in the ERC banking program—it simply expands the areas in which such sources meet eligibility requirements. Therefore, it will have no effect on costs, including workload adjustments or additional paperwork.

Should a stationary source choose to bank creditable reductions of a noncompliant pollutant, existing provisions in LAC 33:III.Chapter 6 require the submittal of an ERC bank application (§615), the maintenance of certain records (§613.A), and the submittal of an annual report (§613.B).

After the effective date of the nonattainment designation, a stationary source that has banked creditable reductions as ERC may benefit in two ways. First, the source could use the ERC to offset the emissions increases associated with a major modification as required by the nonattainment new source review (NNSR) program, LAC 33:III.504. Second, the source could sell the ERC to another source located (or proposing to locate) in the same nonattainment area.

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.

No impact on receipts or income of the affected persons or non-governmental groups is expected.

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 sector.