

*Response to Comment #9:* We disagree with the commenter's characterization of the State's request for a NO<sub>x</sub> exemption as a "scam." We refer the commenter to our rulemaking actions on the NO<sub>x</sub> exemptions and our response to comment #3 of this document for explanation of our bases for previously granting a NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> rules on February 20, 2002 (Louisiana Register, Vol. 28, No. 2). On February 27, 2002, the State submitted to EPA the revised NO<sub>x</sub> rules for the BR area and its Region of Influence. We approved the revised NO<sub>x</sub> rules on September 27, 2002 (67 FR 60877). These NO<sub>x</sub> rules require certain affected categories of NO<sub>x</sub>-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<sub>x</sub>-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<sub>x</sub>-generating facilities to achieve compliance with NO<sub>x</sub> RACT no later than May 1, 2005, the rule became effective when promulgated. Therefore, facilities achieving NO<sub>x</sub> 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<sub>x</sub> RACT implementation. Furthermore, emissions decreased by a voluntary action must be permanent in order to meet the surplus ERC criteria. Because the NO<sub>x</sub> 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<sub>x</sub> control measures not previously in the Louisiana's SIP. *See* September 27, 2002 (67 FR 60877). These NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> exemption should not be used to create NO<sub>x</sub> ERCs or offsets that would not have existed if EPA had not granted the NO<sub>x</sub> exemption.

*Response to Comment #11:* As stated previously, in our May 7, 2002 (67 FR 30638) proposal, in granting the NO<sub>x</sub> exemption, EPA reserved the right to reverse the approval of the exemption if subsequent modeling data demonstrated an ozone attainment benefit from NO<sub>x</sub> emission controls. Photochemical grid modeling recently conducted for the BR area SIP indicates that control of NO<sub>x</sub> sources will contribute to the BR area's attainment of the ozone NAAQS. The

State of Louisiana, therefore, requested that EPA rescind the NO<sub>x</sub> exemption based on this new modeling. We believe that the State has adequately demonstrated that additional NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> emissions will need to adhere to applicable rules and regulations instead of becoming a function of an arbitrary and variable baseline level for NO<sub>x</sub> 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<sub>x</sub> exemptions, the State will be required to implement the applicable requirements of the Act for control of NO<sub>x</sub> emissions, including RACT, NNSR, vehicle I/M, banking, and general and transportation conformity. Rescission of the NO<sub>x</sub> exemption and implementation of the State's newly promulgated NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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.