existing requirement for the State to use voluntary consensus standards (VCS), USEPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, USEPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. USEPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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. USEPA 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. section 804(2). This rule will be effective December 10, 2001.

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 January 7, 2002. 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 25, 2001.

**Jo Lynn Traub,**

*Acting Deputy Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations are 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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(159), to read as follows:

**§ 52.720 Identification of plan.**

* * * * *

(c) * * *

(159) On April 9, 2001, David Kolaz, Chief, Bureau of Air, Illinois Environmental Protection Agency, submitted rules regulating $NO_X$ emissions from cement kilns. On May 1, 2001, Mr. Kolaz submitted rules regulating $NO_X$ emissions from industrial boilers and turbines and requesting two minor revisions to the Illinois $NO_X$ emissions budget. On June 18, 2001, Mr. Kolaz submitted a demonstration that Illinois' regulations were sufficient to assure that $NO_X$ emissions in Illinois would be reduced to the level budgeted for the state by USEPA. On September 20, 2001, Mr. Kolaz sent a letter clarifying that Illinois' rules for industrial boilers and turbines require compliance on a unit-by-unit basis.

(i) Incorporation by reference.

(A) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 211, Definitions, sections 211.955, 211.960, 211.1120, 211.3483, 211.3485, 211.3487, 211.3780, 211.5015, and 211.5020, published at 25 Ill. Reg. 4582, effective March 15, 2001.

(B) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 217, Subpart A, Section 217.104, Incorporations by Reference, published at 25 Ill. Reg. 4597, effective March 15, 2001.

(C) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 217, Subpart T, Cement Kilns, sections 217.400, 217.400, 217.402, 217.404, 217.406, 217.408, and 217.410, published at 25 Ill. Reg. 4597, effective March 15, 2001.

(D) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 211, Sections 211.4067 and 211.6130, published at 25 Ill. Reg. 5900, effective April 17, 2001.

(E) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 217, Subpart U, $NO_X$ Control and Trading Program for Specified $NO_X$ Generating Units, sections 217.450, 217.452, 217.454, 217.456, 217.458, 217.460, 217.462, 217.464, 217.466, 217.468, 217.470, 217.472, 217.474, 217.476, 217.478, 217.480 and 217.482, published at 25 Ill. Reg. 5914, effective April 17, 2001.

(ii) Additional material.

(A) Letter dated June 18, 2001, from David Kolaz, Illinois Environmental Protection Agency, to Cheryl Newton, United States Environmental Protection Agency.

(B) Letter dated September 20, 2001, from David Kolaz, Illinois Environmental Protection Agency, to Bharat Mathur, United States Environmental Protection Agency.

3. Section 52.726 is amended by adding paragraph (cc) to read as follows:

**§ 52.726 Control strategy: ozone.**

* * * * *

(cc) Approval—Illinois has adopted and USEPA has approved sufficient $NO_X$ emission regulations to assure that it will achieve the level of $NO_X$ emissions budgeted for the State by USEPA. USEPA has made two minor budget revisions requested by Illinois, adding a boiler owned by LTV Steel and deleting a boiler owned by the University of Illinois from the inventory of large $NO_X$ sources.

[FR Doc. 01–27933 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[IL203–3; FRL–7077–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Illinois; Oxides of Nitrogen Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On February 23, 2001, Illinois submitted a rule to control emissions of oxides of nitrogen ( $NO_X$) from electric generating units (EGU). Illinois' EGU rule represents a key portion of the State's response to EPA's October 27, 1998 $NO_X$ State Implementation Plan (SIP) Call. Illinois adopted other rules to regulate $NO_X$ emissions from non-EGU and cement kilns and these rules are addressed in other rulemakings. In EPA's proposed rule on the adequacy of Illinois' EGU rule, we noted that the rule could not be approved unless the State changed a compliance delay provision to meet the provisions of compliance in the EPA model rule. The State made this change, as well as other changes we recommended, and EPA is taking this final action to approve the rule. The rule also provides $NO_X$ emission reductions to support attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area.

**DATES:** This final rule is effective December 10, 2001.

**ADDRESSES:** You may obtain copies of the State Implementation Plan revision request at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please telephone John Paskevicz at (312) 886–6084 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Chicago, Illinois, 60604, Telephone Number: (312) 886–6084, E-Mail Address: paskevicz.john@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms ''you'' and ''me'' refer to the reader of this final rule and to sources subject to the State rule, and the terms ''we'', ''us'', or ''our'' refers to EPA.

**Table Of Contents**



## I. Background

### *A. What Clean Air Act Requirements Apply to or Led to the State's Submittal of the $NO_X$ Emission Control Rule?*

The Clean Air Act (Act or CAA) as amended in 1990 requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for certain air pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. Clean Air Act sections 108 and 109. In 1979, EPA promulgated the 1-hour ground-level ozone standard of 0.12 parts per million (ppm) or 120 parts per billion (ppb). 44 FR 8202 (February 8, 1979).

Ground-level ozone is generally not directly emitted by sources. Rather, volatile organic compounds (VOC) and $NO_X$, both emitted by a wide variety of sources, react in the presence of sunlight to form additional pollutants, including ozone. $NO_X$ and VOC are referred to as precursors of ozone.

The Act, as amended in 1990, requires EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period. Clean Air Act section 107(d)(4); 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the areas' ozone design values, as marginal, moderate, serious, severe, or extreme. Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment with the ozone NAAQS is to be achieved vary with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Moderate areas were subject to more stringent planning and control requirements but were provided more time to attain the ozone standard, until November 15, 1996. Severe and extreme areas are subject to even more stringent planning and control requirements but are also provided more time to attain the standard. Severe areas are required to attain the ozone NAAQS by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values for the 1987 through 1989 period.

The Chicago-Gary-Lake County ozone nonattainment area was classified as severe-17 and its attainment date is November 15, 2007. The Chicago-Gary-Lake County ozone nonattainment area is defined (40 CFR 81.314 and 81.315) to contain Cook, DuPage, Grundy (Aux Sable and Goose Lake Townships only), Kane, Kendall (Oswego Township only), Lake, McHenry, and Will Counties in Illinois, and Lake and Porter Counties in Indiana.

The Act requires moderate and above ozone nonattainment areas (including severe ozone nonattainment areas) to be addressed in ozone attainment demonstrations, including adopted emission control regulations sufficient to achieve attainment of the ozone NAAQS by the applicable ozone attainment dates. The requirements of the Act for ozone attainment demonstrations for moderate and above ozone attainment areas are determined by considering several sections of the Act. Section 172(c)(6) of the Act requires SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment dates. Section 172(c)(1) of the Act requires the implementation of all reasonably available control measures (including reasonably available control technology [RACT]) and requires the SIP to provide for sufficient annual reductions in emissions of VOC and $NO_X$ as necessary to attain the ozone NAAQS by the applicable attainment dates. Sections 182(c)(2) and (d) required SIP revision submissions by November 15, 1994 for serious and severe ozone nonattainment areas to demonstrate how the areas would attain the 1-hour standard and

how they would achieve rate-of-progress (ROP) reductions in VOC emissions of 9 percent for each 3-year period until the date of attainment. (In some cases, $NO_X$ emission reductions can be substituted for the required VOC emission reductions to achieve ROP.) Section 182(c)(2)(A) requires the ozone attainment demonstrations for serious and above ozone nonattainment areas to be based on the use of photochemical grid modeling or on other analytical methods determined to be at least as effective. The attainment demonstrations based on photochemical grid modeling can address the emission impacts of both VOC and $NO_X$. The $NO_X$ emission control regulations addressed in this rulemaking are, in part, intended to meet the requirements for the attainment demonstrations for the Chicago-Gary-Lake County ozone nonattainment area.

On October 27, 1998, the EPA promulgated a $NO_X$ SIP Call for a number of States, including the State of Illinois. The $NO_X$ SIP Call requires the subject States to develop $NO_X$ emission control regulations sufficient to provide for a prescribed $NO_X$ emission budget in 2007, and is further discussed below. These $NO_X$ emission reductions will address ozone transport in the area of the country primarily east of the Mississippi River. The rule also provides $NO_X$ emission reductions to support attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area. EPA promulgated the $NO_X$ SIP Call pursuant to the requirements of CAA section 110(a)(2)(D) and our authority under CAA section 110(k). Section 110(a)(2)(D) applies to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. It requires a SIP to contain adequate provisions that prohibit any source or type of source or other types of emissions within a State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance or attainment of a standard by any other State with respect to any NAAQS. Section 110(k)(5) authorizes the EPA to find that a SIP is substantially inadequate to meet any CAA requirement when appropriate, and, based on such finding, to then require the State to submit a SIP revision within a specified time to correct such inadequacies.

*B. What Analyses and EPA Rulemaking Actions Support the Need for the $NO_X$ Emission Control Rule?*

The State of Illinois has the primary responsibility under the CAA for ensuring that Illinois meets the ozone NAAQS and is required to submit a SIP that specifies emission limitations, control measures, and other measures necessary for attainment, maintenance, and enforcement of the NAAQS within the State. The SIP for ozone must meet the CAA requirements discussed above, must be adopted pursuant to notice and comment rulemaking, and must be submitted to the EPA for approval. A number of analyses and EPA rulemaking actions have affected the SIP revisions needed for the Chicago-Gary-Lake County ozone nonattainment area as discussed below.

The States of Illinois, Indiana, Wisconsin, and Michigan have worked cooperatively to provide the EPA with an ozone attainment demonstration for the Lake Michigan area, which includes the Chicago-Gary-Lake County ozone nonattainment area. Analyses conducted to support this ozone attainment demonstration, as submitted in 1994 and supplemented in April 1998, indicate that reductions in upwind $NO_X$ emissions are needed to reduce the transport of ozone into these nonattainment areas.

On March 2, 1995, Mary D. Nichols, Assistant Administrator for EPA's Air and Radiation Division, published a memorandum titled ''Ozone Attainment Demonstrations.'' In this memorandum, the EPA recognized that the development of the necessary technical information, as well as the emission control measures necessary to achieve the attainment of the ozone NAAQS had been difficult for the States affected by significant ozone transport. EPA established a two-phase process for States with serious and severe ozone nonattainment areas to develop ozone attainment SIPs. Under Phase I, States were required to complete 1994 SIP requirements (with the exception of final ozone attainment demonstrations), submit regulations sufficient to meet ROP requirements through 1999, and submit initial ozone modeling analyses, including preliminary ozone attainment demonstrations based on assumed reductions in upwind ozone precursor emissions. Phase II called for a two-year consultative process to assess regional strategies to address ozone transport in the eastern United States and required submittal of all remaining ROP submittals to cover ROP through the attainment dates, final attainment demonstrations to address the emission reduction requirements resulting from the two-year consultative process and any additional rules and emission controls needed to attain the ozone standard, and any regional controls needed for attainment by all areas in the eastern half of the United States.

In response to the problem of ozone transport, the Environmental Council of States (ECOS) recommended the formation of a national workgroup to assess the problem and to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to the March 2, 1995 EPA memorandum, the Ozone Transport Assessment Group (OTAG), a partnership among EPA, the 36 eastern States and the District of Columbia, and industrial, academic, and environmental groups, was formed to conduct regional ozone transport analyses and to develop a recommended ozone transport control strategy. OTAG was given the responsibility for conducting the two-years of analyses envisioned in the March 2, 1995, EPA memorandum.

OTAG conducted a number of regional ozone data analyses and regional ozone modeling analyses using photochemical grid modeling. In July 1997, OTAG completed its work and made recommendations to the EPA concerning the regional emissions reductions needed to reduce transported ozone as an obstacle to attainment in downwind areas. OTAG recommended a possible range of regional $NO_X$ emission reductions to support the control of transported ozone. Based on OTAG's recommendations and other information, EPA issued the $NO_X$ SIP Call rule on October 27, 1998. 63 FR 57356.

In the $NO_X$ SIP Call, EPA determined that sources and emitting activities in 23 jurisdictions[1] emit $NO_X$ in amounts that ''significantly contribute'' to ozone nonattainment or interfere with maintenance of the 1-hour ozone NAAQS in one or more downwind areas in violation of CAA section 110(a)(2)(D)(i)(I). EPA identified $NO_X$ emission reductions by source sector that could be achieved using cost-effective measures and set state-wide $NO_X$ emission budgets for each affected jurisdiction for 2007 based on the possible cost-effective $NO_X$ emission reductions. The source sectors include nonroad mobile, highway mobile, area, electrical generating units (EGUs) (including stationary boilers and turbines, which may generate steam for industrial processes but whose primary purpose is to generate electricity for sale to the electrical grid), and major non-

[1]Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

EGU stationary point sources (process stationary boilers or turbines, whose primary purpose is to generate steam for industrial processes). EPA established recommended $NO_X$ emissions caps for large EGUs (serving a generator greater than 25 megawatts) and for large non-EGUs (maximum design heat input of greater than 250 million British thermal units [Btu] per hour [mmBtu/hr]). EPA determined that significant $NO_X$ reductions using cost-effective measures could be obtained as follows: application of a 0.15 pounds $NO_X$/mmBtu heat input emission rate limit for large EGUs; a 60 percent reduction of $NO_X$ emissions from large non-EGUs; a 30 percent reduction of $NO_X$ emissions from large cement kilns; and a 90 percent reduction of $NO_X$ emissions from large stationary internal combustion engines not serving electricity generators. The 2007 state-wide $NO_X$ emission budgets were established by jurisdiction, in part, by assuming these levels of $NO_X$ emission controls coupled with $NO_X$ emissions projected by source sector to 2007.

Although the state-wide $NO_X$ emission budgets were based on the levels of reduction achievable through cost-effective emission control measures, the $NO_X$ SIP Call allows each State to determine what measures it will choose to meet the state-wide $NO_X$ emission budgets. It does not require the States to adopt the specific $NO_X$ emission rates assumed by the EPA in establishing the $NO_X$ emission budgets. The $NO_X$ SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the $NO_X$ state-wide emission budget. The $NO_X$ SIP Call encourages the States to adopt a $NO_X$ cap and trade program for large EGUs and large non-EGUs as a cost-effective strategy and provides an interstate $NO_X$ trading program that the EPA will administer for the States. If States choose to participate in the national trading program, the States must submit SIPs that conform to the trading program requirements in the $NO_X$ SIP Call.

On April 30, 1998, and December 26, 2000, the State of Illinois submitted a major revision of the ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area. In that attainment demonstration revision, the State demonstrated that significant reductions in transported ozone and $NO_X$ would be necessary to achieve attainment of the 1-hour ozone standard in the nonattainment area. Illinois committed to complete the ozone attainment demonstration and to adopt sufficient local and regional controls as needed to demonstrate attainment of the ozone standard and to submit the final attainment demonstration and adopted regulations to the EPA by December 2000. The EPA proposed to conditionally approve the 1-hour attainment demonstration based, in part, on the State's commitment to adopt and submit a final attainment demonstration and a post-1999 ROP plan, including the necessary State emission control regulations, by December 31, 2000. 64 FR 70496. The $NO_X$ regulations reviewed in this rule are, in part, intended to meet part of the State's commitment to complete the ozone attainment demonstration for the Chicago-Gary-Lake County nonattainment area.

*C. What Have Been the Court Rulings Regarding EPA's $NO_X$ Emission Control Rules?*

When the EPA published the $NO_X$ SIP Call on October 27, 1998, a number of States and various industry groups filed petitions challenging the SIP Call before the United States Court of Appeals for the District of Columbia Circuit. See *Michigan* v. *EPA*, 213 F.3d 663(D.C. Cir. 2000). The Court, on May 25, 1999, stayed the obligation of States to submit SIPs in response to the $NO_X$ SIP Call rule. Subsequently, on March 3, 2000, the Court upheld most of the $NO_X$ SIP Call. The Court, however, vacated the SIP Call as it applied to Missouri and Georgia and remanded for further consideration the inclusion of portions of Missouri and Georgia in the rule. The Court also vacated the rule as it applied to Wisconsin because EPA had not made a showing that sources in Wisconsin significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS in any other State. Finally, the Court also remanded two issues concerning a limited portion of the $NO_X$ emission budgets. On June 22, 2000, the Court removed the stay of States' obligation to submit SIPs in response to the $NO_X$ SIP Call and denied petitioners' motions for rehearing and rehearing en banc. In removing the stay, the Court provided that EPA should allow 128 days for States to submit SIPs. Thus, SIPs were to be submitted to us by October 30, 2000.

**II. Summary of the State Submittal**

*A. When Was the State $NO_X$ EGU Emission Control Rule Submitted to the EPA?*

On June 29, 2000, the Illinois Environmental Protection Agency (IEPA) submitted a draft $NO_X$ emission control rule to the EPA for pre-adoption review.

On July 18, 2000, EPA received a letter from David J. Kolaz, Chief, Bureau of Air, Illinois Environmental Protection Agency, which contained a number of documents, including the draft rule submitted on June 29, 2000, along with additional documentation for the draft rule. The letter included a request from the Bureau Chief to process the submittal in parallel (i.e., parallel processing) to the development of the rule at the State level and included a schedule for development and adoption of the rule by the State.

Parallel processing allows a State to submit a plan for approval prior to actual adoption by the State. 47 FR 27073 (June 23, 1982) A submittal for parallel processing must include the following three items: a letter from the State requesting parallel processing; a schedule for final adoption or issuance of the plan; and a copy of the proposed regulation or document. Illinois submitted these three items of information in the letter dated July 18, 2000, from the Bureau Chief. The Bureau Chief is the authorized representative for the State to submit SIP revisions. The letter asks that EPA parallel process the submittal, and it includes milestones leading to final adoption of the plan. The milestones were acceptable to EPA as a schedule, however the end date of final approval (final rule adoption) by the Illinois Pollution Control Board (IPCB) could not be precisely established. Enclosed with the letter was a copy of the draft $NO_X$ rule along with a ''Statement of Reasons'' provided to the IPCB by the Legal Counsel of the Illinois Environmental Protection Agency to support the adoption of the rule.

On December 27, 2000, EPA received a final rule, Illinois Administrative Code 217, Subpart W, $NO_X$ Trading Program for Electrical Generating Units. This rule was made effective as of December 21, 2000, following approval by the IPCB. The rule included changes recommended by EPA with the exception of the portion of the rule (section 217.756(d)(3)) which contained unapprovable compliance delay language. The Administrative Register version of this package, containing a technical support document, supplemental information, hearing comments and other information such as the ozone attainment demonstration was submitted in a letter dated February 23, 2001. This package contained compliance delay language as the only nonapprovable element of the submittal. The compliance delay language provided for the State to delay compliance with the rule to the year following such time that all other States

in EPA Region 5, and States contiguous with the State of Illinois, have adopted $NO_X$ regulations and EPA has approved these State's $NO_X$ plans.

However, in a June 27, 2001, letter from the Chief, Bureau of Air, Illinois Environmental Protection Agency, EPA was informed that on June 22, 2001, the Governor signed into law House Bill 1599. This new Illinois law specifies a final compliance date of May 31, 2004, and satisfies EPA concerns expressed in our August 31, 2000, proposal.

*B. What Are the Basic Components of the State's Final Rule?*

The State based the rule primarily on EPA's part 96 Trading Rule. Many sections of part 96 are incorporated by reference (IBR) into the rule. In addition to IBR of portions of 40 CFR part 96, Illinois' $NO_X$ rule also includes IBR of portions of 40 CFR parts 60, 72, 75, and 76. Section 217.104 of the Illinois rule identifies the CFR parts and sections included in the IBR. Table 1 identifies the Volume 40 CFR parts and sections included by IBR in Illinois' $NO_X$ rule.

TABLE 1.—40 CFR PARTS AND SECTIONS INCORPORATED BY REFERENCE IN ILLINOIS' EGU $NO_X$ RULE

| 40 CFR part and section | Section title/subject |
|---|---|
| 60; Appendix A | Method 7 (The phenol disulfonic acid method). |
| 72; All Sections | Permits regulation. |
| 75; All Sections | Continuous emission monitoring. |
| 76; All Sections | Acid rain nitrogen oxides emission reduction program. |
| 96; Subpart A: | |
| 96.1 | Purpose. |
| 96.2 | Definitions. |
| 96.3 | Measurements, abbreviations, and acronyms. |
| 96.5 | Retired unit exemptions. |
| 96.6 | Standard requirements. |
| 96.7 | Computation of time. |
| 96; Subpart B: | |
| 96.10 | Authorization and responsibility of the $NO_X$ authorized account representative. |
| 96.11 | Alternate authorized account representative. |
| 96.12 | Changing the authorized account representative and alternate authorized account representative. |
| 96.13 | Account certificate of representation. |
| 96.14 | Objections concerning authorized account representative. |
| 96; Subpart D: | |
| 96.30 | Compliance certification report. |
| 96.31 | Permitting authority's and Administrator's action on compliance certification. |
| 96; Subpart F: | |
| 96.50 | $NO_X$ Allowance Tracking System accounts. |
| 96.51 | Establishment of accounts. |
| 96.52 | $NO_X$ Allowance Tracking System, lists responsibilities of $NO_X$ authorized account representative. |
| 96.53 | Recordation of $NO_X$ allowance allocations. |
| 96.54 | Compliance. |
| 96.55(a) | Banking. |
| 96.55(b) | Banking. |
| 96.56 | Account error. |
| 96.57 | Closing of general accounts. |
| 96; Subpart G: | |
| 96.60 | $NO_X$ allowance transfers. |
| 96.61 | EPA recordation. |
| 96.62 | Notification. |
| 96; Subpart H: | |
| 96.70 | Monitoring and reporting, General requirements. |
| 96.71 | Initial certification and recertification procedures. |
| 96.72 | Out of control periods. |
| 96.73 | Notifications. |
| 96.74 | Recordkeeping and reporting. |
| 96.75 | Petitions. |
| 96.76 | Additional requirements to provide heat input data for allocations purposes. |

In addition to the IBR portion, the rule contains a number of other subparts and sections. Table 2 lists these subparts and sections. Some of these were derived from federal regulations. (Illinois attempted to either revise the federal regulations to more abbreviated versions or to revise the federal regulations to make them more compatible with existing State regulations.) Where appropriate, the final column of Table 2 notes the federal regulation(s) from which the State regulation was derived or notes the effect of the State regulation relative to related federal regulations.

TABLE 2.—NON-IBR PORTIONS OF ILLINOIS' $NO_X$ RULE

| Subpart/Section | Title | Comparable Federal Regulation/Note |
|---|---|---|
| Subpart B/Section 211 | Definitions | Replace Some IBR Definitions. |
| Subpart A | General Provisions | |
| Section 217.100 | Scope and organization | |
| Section 217.101 | Measurement Methods | |
| Section 217.102 | Abbreviations and Units | Replaces some abbreviations included by IBR. |
| Section 217.104 | Incorporations by Reference | |
| Subpart W | $NO_X$ Trading Program for Electrical Generating Units. | |
| Section 217.750 | Purpose | |
| Section 217.752 | Severability | |
| Section 217.754 | Applicability | See 40 CFR 96.4. |
| Section 217.756 | Compliance Requirements | |
| Section 217.756(b) | Permit requirements | |
| Section 217.756(c) | Monitoring requirements | |
| Section 217.756(d) | $NO_X$ requirements | |
| Section 217.756(e) | Recordkeeping and reporting requirements | |
| Section 217.756(f) | Liability | |
| Section 217.758 | Permitting Requirements | |
| Section 217.758(a) | Budget permit requirements | See 40 CFR 96.20 and 96.21. |
| Section 217.758(b) | Budget permit applications | See 40 CFR 96.22 and 96.23. |
| Section 217.760 | $NO_X$ Trading Budget | See 40 CFR 96.40, 96.41, and 96.42. |
| Section 217.762 | Methodology for Calculating $NO_X$ Allocations for Budget Electrical Generating Units. | See 40 CFR 96.42. |
| Section 217.764 | $NO_X$ Allocations for Budget EGUs | See 40 CFR 96.42. |
| Section 217.768 | New Source Set-Asides for ''New'' Budget EGUs | |
| Section 217.770 | Early Reduction Credits for Budget EGUs | See 40 CFR 96.55. |
| Section 217.774 | Opt-in Units | |
| Section 217.776 | Opt-In Process | See 40 CFR 96.84. |
| Section 217.778 | Budget Opt-in Units: Withdrawal from $NO_X$ Trading Program. | |
| Section 217.780 | Opt-in Units: Change in Regulatory Status | |
| Section 217.782 | Allowance Allocations to Budget Opt-In Units | |
| Appendix D | Non-Electrical Generating Units | |
| Appendix F | Allowances for Electrical Generating Units | |

Using information provided by the IEPA to the IPCB in support of the adoption of this rule, the following summarizes several of the various rule sections listed in Table 2 above.

*Subpart B, Section 211*

A number of new definitions are added to an existing part 211 of Illinois' air pollution rules. Definitions of the following terms are added: Allowance; Combined Cycle System; Combustion Turbine; Common Commercial Operation; Commence Operation; Common Stack; Control Period; Excess Emissions; Fossil Fuel; Fossil Fuel-Fired; Generator; Heat Input; Heat Input Rate; Nameplate Capacity; Potential Electrical Output Capacity; and Repowering. The specifics of these definitions do affect the completeness and enforceability of the rule(s) that uses them. Therefore, they have been compared to definitions contained in 40 CFR parts 96 and 97 as part of the review conducted for this final rulemaking. EPA concurs with these definitions.

*Subpart A*

*Section 217.100 Scope and Organization*

This section specifies the purpose of the State's $NO_X$ rule.

*Section 217.101 Measurement Methods*

This section states that the measurement of $NO_X$ emissions at sources and facilities covered by the rule shall be conducted according to: (a) the phenol disulfonic acid method (40 CFR part 60, appendix A, Method 7 (1999)); and continuous emissions monitoring pursuant to 40 CFR part 75 (1999).

*Section 217.102 Abbreviations and Units*

Like definitions of terms, abbreviation definitions can affect the completeness and enforceability of a rule, and the abbreviations added to this rule have been reviewed from this standpoint. It should be noted that part 211 of Illinois' air pollution rules also contains a number of defined abbreviations. The abbreviations added in section 217.102 are specific to the $NO_X$ rule and do not necessarily apply to other Illinois air pollution control rules.

*Section 217.104*

As noted above, the State amended section 217.104 (to add this section to existing Illinois rules) to add portions of 40 CFR part 96 and 40 CFR parts 72, 75, and 76 (see Table 1 above) to the documents that have been incorporated into Illinois' rules by reference. IBR documents are an integral part of Illinois' rules and are enforceable in the same manner as one would enforce any State rule.

*Trading Program for Electrical Generating Units*

*Section 217.754 Applicability*

This section addresses the applicability of the State's $NO_X$ trading

program. Subsection (a) provides that the $NO_X$ trading rule and emissions cap applies to all fossil fuel-fired stationary boilers, combustion turbines or combined cycle systems, serving a generator which has a nameplate capacity exceeding 25 megawatts (MWe) if the generated electricity is sold. This section also applies to fossil fuel-fired units with a maximum design heat input rate of greater than 250 mmBtu/hour and serving smaller generators under certain specified circumstances, including the condition that a served generator is larger than 50 percent of a unit's potential electrical output capacity (such a unit would also be classified as an electrical generating unit subject to the rule and the trading program requirements). Subsection (b) of this section provides that units meeting the above criteria are subject to the emission limits of the $NO_X$ Trading Program.

Subsection (c) provides an exemption for low-emitters, such as units that burn natural gas and/or fuel oil exclusively and have potential $NO_X$ emission rates of 25 tons or less during the control period. The owner or operator of such a unit may choose to get an operating permit that limits emissions to this lower level through federally enforceable conditions as specified in this subsection. Owners and operators seeking low emitter status affect the emission allowances covered in the $NO_X$ Trading Program.

Further interpretation of this section is contained in a June 18, 2001, letter from IEPA addressing low-emitter status. The intent of Illinois' low emitter status provisions in Subpart U (§ 217.472) and Subpart W (§ 217.754 (c)) is to provide a unit two alternatives to qualify for low emitter status. The first alternative requires a unit to take permit limits on its operating hours and potential $NO_X$ mass emissions in order to ensure that the unit's potential $NO_X$ mass emissions do not exceed 25 tons of $NO_X$ in an ozone season. The operating hours restriction follows the procedures in EPA's model rule, 40 CFR 96.4(b), and is calculated using a default $NO_X$ emissions rate and the unit's maximum potential hourly heat input.

The second alternative allows a unit with monitored ozone season $NO_X$ emissions of 25 tons or less, as monitored according to part 75, to qualify for low emitter status. Under this alternative, a unit must again take permit limits restricting ozone season operating hours and potential $NO_X$ mass emissions during the ozone season to 25 tons or less.

Also, the State made clearer, in its letter, the meaning of the term ''potential'' in these provisions. In Subpart W, section 217.754(c), this term is first used in paragraph (c)(1)(B), stating that the source's permit must ''Limit the EGU's potential $NO_X$ mass emissions * * * to 25 tons or less.'' Under paragraph (c)(1)(D), the permit must in addition ''Require that the EGU's potential $NO_X$ mass emissions be calculated [either by monitoring according to 40 CFR Part 75 or by multiplying maximum potential hourly emissions times hours of operation].'' Consequently, ''potential emissions'' must be interpreted to mean the emissions determined according to whichever method is used under section 217.754(c)(1)(D). Since the measurements under 40 CFR Part 75 measure actual emissions, a low emitting source using such monitoring would rely largely on actual emissions data to evaluate compliance with the permit limit on potential $NO_X$ mass emissions.

The contents of this letter and an analysis was published in the proposed rule dated June 28, 2001 (66 FR 34382), because similar provisions are found in Subpart U, Section 217.472(a). The public comment period closed for the June 28, 2001 proposed rule on July 30, 2001. No adverse comments were received on Illinois' low-emitter status provisions. EPA believes the explanation provided by the State regarding low-emitter status adequately addresses EPA's concerns.

*Section 217.756 Compliance Requirements*

This section specifies the compliance requirements for EGUs subject to the $NO_X$ Trading Program (budget EGUs). Owners or operators of each source that has one or more budget EGUs must submit an application meeting the requirements of section 217.758 for an emissions budget permit from the IEPA. The budget permit must specify federally enforceable conditions covering the $NO_X$ Trading Program and must satisfy all other permitting requirements in Illinois' air quality rules. The application for a budget permit is subject to specified timing requirements.

Subject budget EGUs must meet specified monitoring requirements, including continuous emissions monitoring. An account representative for a subject budget EGU must comply with specified monitoring compliance certification and reporting requirements of 40 CFR part 96, subpart H. The monitoring results will be used to certify compliance with the budget emissions limitations.

Subsection (d) requires the account representative for a budget EGU to hold sufficient emission allowances available for compliance deduction in the budget EGU's compliance account or the source's overdraft account by November 30 of each year, starting in the compliance year, to account for $NO_X$ emissions. Only a certain number of allowances will be given to a budget EGU each control period (May 1 through September 30) based on an established State-wide $NO_X$ emissions cap and an allowance distribution system devised cooperatively by the State and the affected sources. Budget EGUs can not use an allowance prior to the control period in which it is allocated by the State.

Subsection (e) provides the recordkeeping requirements for the budget EGUs. All emission monitoring information must be recorded and maintained in accordance with 40 CFR part 96, subpart H. Documents and records must be kept and must be made available for inspection upon request for 5 years unless a different period is specified elsewhere (under other parts of these SIP rules).

Subsection (f) contains the provisions governing liability of budget EGUs, their owner and operators, and account representatives. The owner and account representative of one budget EGU are not liable for any violation of any other budget EGU with which they are not affiliated, except with respect to requirements for EGUs with a common stack.

*Section 217.758 Permitting Requirements*

The budget permit of a budget EGU must contain federally enforceable conditions that apply to the unit and provide that the budget permit is a complete and separable portion of the source's entire permit.

Subsection (a) prohibits the issuance of a budget permit and the establishment of a $NO_X$ emissions allowance until the IEPA and the EPA have received a complete ''account certificate of representation'' from the budget EGU's account representative, and sets forth the timing for submitting a budget permit application where one or more of the budget EGUs are subject to the requirements of section 39.5 of the Illinois Clean Air Act Permit Program. Budget EGUs not subject to these requirements are also required to obtain a permit with federally enforceable conditions.

*Section 217.760 The $NO_X$ Trading Budget*

Subsection (a) provides that the total base $NO_X$ trading budget available statewide for allowance allocations for each control period (May 1 through September 30) is 30,701 tons (30,701 allowances). This budget may be increased or decreased under various circumstances, such as the opt-in of non-subject sources or the opt-out of exempted low-emitter sources. This subsection also provides that for the years of 2004 through 2006, 5 percent of the 30,701 allowances will be allocated to a new source set-aside. For the years 2007 and thereafter, the new source set-aside will be reduced to 2 percent of the 30,701 allowances.

Subsection (b) authorizes the IEPA to adjust the total EGU trading budget available for allocation. This is done to remove allowances for low-emitters opting to become exempt from some provisions of the $NO_X$ Trading Program.

Subsection (c) authorizes the IEPA to adjust the total base EGU trading budget pro-rata if the EPA subsequently makes adjustments in the EGU budget.

*Section 217.762 Methodology for Calculating $NO_X$ Allocations for Budget Electrical Generating Units (EGUs)*

The methodology used to calculate allocations (not the total state-wide emission cap) is based on the emission rate limit and a unit's control period heat input. Appendix F of the rule lists the budget EGUs and their associated allowances. For budget EGUs, including opt-ins, not listed in Appendix F, the limiting emission rate used in the calculation of allowances is the more stringent of 0.15 pounds $NO_X$/million Btu heat input or the permitted $NO_X$ emission rate, but never less than 0.055 pounds $NO_X$ per million Btu heat input.

Subsection (b) sets forth how the heat input is to be determined for the control period. This heat input for each budget EGU is used along with the emission limit to determine the $NO_X$ allowance for the EGU.

*Section 217.764 $NO_X$ Allocations for Budget EGUs*

This section sets forth, for each control period, the allowance allocations for budget EGUs. The allocations involve a ''fixed/flex'' approach from 2007 through 2010 and a ''100 percent flex'' approach in 2011 and thereafter (consult this section of the rule for the details of these approaches). The allocations for 2004 through 2006 are specified in subsection (a). Other subsections provide for allocations of allowances to budget EGUs for follow-on years out to 2011.

*Section 217.768 New Source Set-Aside for ''New'' Budget EGUs*

This section sets aside allowances for new sources as noted above. During the period of 2004 through 2006, any allowances that are not allocated to new sources will be allocated to certain EGUs. After January 1, 2004, new budget EGUs that commence commercial operation may purchase allowances from the new source set-aside based on a pricing structure defined in this section.

*Section 217.770 Early Reduction Credits for Budget EGUs*

This section allows budget EGUs to request early reduction credits (ERCs) if they reduce $NO_X$ emissions in the 2001, 2002 or 2003 control periods for use in 2004 and 2005 control periods. This section sets forth the various requirements associated with the generation and recording of these ERCs along with the requirement for monitoring system availability. It is understood that early reduction credits for the year 2001 would require emissions monitoring according to part 75 during the 2000 ozone period in order to establish a baseline and for each control period for which early reduction credits are requested. This and other issues were addressed to the State in a letter dated May 16, 2001.

*C. Components of the State's Final Rules*

1. What Geographic Regions and Sources Are Affected by the State's Final Rule?

The final rules affect all fossil fuel-fired boilers, combustion turbines or combined cycle systems in the State of Illinois serving a generator with a nameplate capacity greater than 25 MWe and selling electricity (and boilers, turbines, and all combined cycle systems in the State of Illinois serving smaller generators provided that these units have heat input rates exceeding 250 mmBtu/hour and have a potential to provide more than 50 percent of their power output to the generators), and any opt-in sources in the State of Illinois as described in the rule.

2. What Are the Allowable $NO_X$ Emission Rates or Levels for Affected Sources?

The $NO_X$ reductions called for in the State rule are based on an $NO_X$ emissions cap required for EGUs in the State. The target budget established in the State rule is 30,701 tons for the control period. The cap is based on an emission rate of 0.15 pounds/mmBtu heat input for EGUs operating in 1995/1996 applied to operating levels expected in 2007. With regard to the attainment demonstration for the Chicago-Gary-Lake County nonattainment area, the State submitted an attainment demonstration on December 26, 2000. This rule is intended to provide the level of control from EGUs that, in conjunction with rules establishing similar requirements for other source types, will meet Illinois' $NO_X$ emission budget under the $NO_X$ SIP Call.

3. What Are the Monitoring, Recordkeeping, and Reporting Requirements for Affected Sources?

The IEPA incorporated by reference the EPA Part 96 monitoring, recordkeeping, and reporting requirements for affected sources. However, in section 217.770(a) of the rule, which addresses early reduction credits for budget EGUs, the rule provided that ''* * * monitoring system availability shall be not less than 80 percent during the control period prior to the control period in which the $NO_X$ emissions reduction is made * * *''. Also, in the opt-in process, the State, in section 217.776(b) addressed monitoring system availability of ''* * * not less than 80 percent * * *''. This differed with the EPA requirement for monitoring in section 96.84(b) of 40 CFR part 96, which requires 90 percent availability. In the course of finalizing the rule, the State revised the availability requirement to 90 percent and, therefore, this portion of the rule is approvable.

4. What Is the Compliance/Implementation Deadline for Affected Sources?

The Illinois rule had a compliance date that was contingent upon implementation of $NO_X$ rules in other States. Section 217.756 stated that sources ''* * * shall be subject to the monitoring and [emission control] requirements * * * starting on the later of May 1, 2003, * * * or [May 1 of the year after] all of the other States subject to the provisions of the $NO_X$ SIP Call [in Region 5 or contiguous to Illinois] have adopted regulations to implement $NO_X$ trading programs and other required reductions of $NO_X$ emissions pursuant to the $NO_X$ SIP Call, and such regulations have received final approval by USEPA * * *, or a final FIP for ozone promulgated by USEPA is effective.'' The relevant other States are Indiana, Michigan, Ohio, Missouri, and Kentucky. This language provided for compliance with relevant requirements by May 1, 2003, except that a later compliance date would apply if any of

these five other States did not have adequate $NO_X$ regulations either as approved State regulations or as effective promulgated Federal regulations by the end of 2002.

This language raised significant concerns which we communicated to the State. For EPA to approve this rule and the expected other related rules as satisfying the $NO_X$ SIP Call, EPA must conclude that the controls needed to achieve the budget will be required by May 31, 2004. As noted above, in a June 27, 2001, letter, IEPA informed EPA that on June 22, 2001, the Governor signed into law House Bill 1599 which specifies a May 31, 2004, compliance date applicable to this rule and other rules which are part of the $NO_X$ SIP.

*D. Does the Illinois $NO_X$ Trading Program Meet the Federal $NO_X$ Budget?*

EPA believes the Illinois $NO_X$ EGU rule submittal addresses all of the elements of the $NO_X$ model rule for EGUs and therefore, when fully implemented, will meet the existing requirements of the Federal $NO_X$ budget. The State's SIP included rules controlling emissions from electric generating units, non-electric generating units, cement kilns, and associated budget trading rules. The SIP also includes a rule which incorporates by reference portions of the Federal part 96 rule, and includes a budget demonstration which was submitted by the Chief, Bureau of Air, in a letter dated June 18, 2001.

The most significant portion of the plan was a revision of the State's rules, requested by EPA, which responded to our concerns regarding the delayed compliance date affecting the three source categories and the budget trading program. This revision to the rules was brought about by a change in legislation, signed by the Governor and submitted by the State to EPA in a letter dated June 27, 2001.

All of these items have been reviewed by EPA and found to meet the requirements set forth in the EPA model rule and in part 51.121. The State has not yet submitted a rule to control internal combustion engines because EPA has not promulgated its final rule for this source category.

The budget data are derived from EPA's inventory, obtained from the EPA Internet site at *ftp.epa.gov/EmisInventory/NOxSIPCall_Mar2_2000/*. The following table summarizes the 2007 budget for the five categories of sources identified in EPA's rulemaking, namely electrical generating point sources (EGUs), non-electrical generating point sources (non-EGUs), stationary area sources, non-road mobile sources, and on-road mobile sources.

| Sector | 2007 CAA base ozone season total (tons) | 2007 Budget ozone season total (tons) | Emission reduction (tons) | Category reduction (%) | Percent of total reduction | Contribution to $NO_X$ trading budget (tons) |
|---|---|---|---|---|---|---|
| Electrical Generating Units (EGUs) | 119,311 | 32,372 | 86,939 | 73% | 89% | 30,701 |
| Non-Electrical Generation Units (Non-EGUs) | 71,011 | 59,765 | 11,246 | 16% | 11% | 4,856 |
| Area | 9,369 | 9,369 | 0 | 0 | 0 | 0 |
| On-Road Mobile | 112,518 | 112,518 | 0 | 0 | 0 | 0 |
| Non-Road | 56,724 | 56,724 | 0 | 0 | 0 | 0 |
| Total | 368,933 | 270,748 | 98,185 | 27% Total Reduction | | 35,557 |

The reductions of 11,246 tons from non-EGUs are based on reductions at large cement kilns, large industrial boilers and turbines, and assuming a 90% reduction from large internal combustion (I.C.) engines. Illinois has not yet submitted a rule to control I.C. engines because EPA has not promulgated its final rule covering I.C. engines. Also, in the Subpart U (non-EGU) SIP submittal, Illinois EPA has requested that EPA incorporate a slightly revised budget for non-EGUs that reflects inventory corrections. When these revisions are incorporated, the non-EGU point source's 2007 base and 2007 budget emissions will be 71,011 and 59,765 tons of $NO_X$ per ozone season, respectively, as compared to the 70,948 and 59,577 tons per season reported in EPA's inventory.

As with the approach EPA assumed in formulating its budget, Illinois' approach reflects controls on EGUs and on non-EGUs. Illinois' rules provide for large EGUs and large point non-EGUs to participate in the Federal $NO_X$ Trading Program, and their $NO_X$ emissions are capped at the same level as contained in EPA's inventory of March 2, 2000, with the exception of revisions requested in Illinois' non-EGU (Subpart U) SIP revision. The revised trading budget for non-EGUs as proposed by Illinois is 4,856 tons, as compared to 4,882 reported in the EPA's inventory. The Subpart T cement kiln rule does not cap $NO_X$ emissions from large kilns. Illinois followed EPA's model rule in developing the Subpart T regulation. It is a technology/rate-based rule. Though Illinois has used the emissions reductions specified in the March 2, 2000, inventory, the $NO_X$ emissions can decrease or increase slightly depending on the options the sources choose to comply with the Subpart T rule. EPA is satisfied with the State's submittal.

*E. What Public Review Opportunities Were Provided?*

The State reports that early in 1999, the IEPA commenced regular meetings with the $NO_X$ Technical Committee and with representatives of the existing EGUs. The State met with these existing sources on numerous occasions. Most of the time was spent developing concepts in the flexible portions of the Federal $NO_X$ Trading Program, i.e., initial allocations, allocation methodology, and the use of the Compliance Supplement Pool. The State also met with new EGUs and again with existing EGUs for a second time to discuss how allowances would be allocated.

Following the May 25, 1999 stay by the Court of Appeals, the IEPA shifted its effort to meet the requirements of the 1-hour ozone standard attainment demonstration. When this stay was lifted on June 22, 2000, IEPA again began to formulate a program to comply with the $NO_X$ SIP Call rule. IEPA again met with the affected sources and also with the American Lung Association of Chicago, the Illinois Environmental Council, the Environmental Law and Policy Center, and the Illinois Environmental Regulatory Group.

*F. What Requirements are Contained in the $NO_X$ Emission Control Rule From the Standpoint of the Lake Michigan Ozone Attainment Demonstration?*

As noted in the December 16, 1999 proposed rulemaking on the State's

attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area (64 FR 70496), the attainment demonstration noted that significant reductions in regional $NO_X$ emissions would be needed to attain the standard in the nonattainment area. The State did assume significant future reductions in background (transported) ozone levels and upwind $NO_X$ emissions to reflect possible impacts from EPA's $NO_X$ SIP Call based on information available prior to April 1998.

*G. What Guidance did EPA Use to Evaluate Illinois' $NO_X$ Control Program?*

The State of Illinois asked that the Part 217 $NO_X$ emissions control rule be parallel processed by EPA in order to expedite eventual approval of the State's $NO_X$ SIP. Guidance for parallel processing is found at 47 FR 27073 (June 23, 1982). In addition, we used 40 CFR part 96 for review of portions of the submittal which apply. The State incorporated by reference a significant portion of 40 CFR part 96. The portions incorporated by reference are listed elsewhere in this action.

*H. Does the Illinois Part 217 $NO_X$ Emissions Control Program Meet the Needs of the Ozone Attainment Demonstration?*

Illinois and other Lake Michigan States completed the attainment demonstration for the Lake Michigan area. EPA proposed on July 11, 2001 (66 FR 36370) to approve IEPA's Chicago area attainment demonstration because we believe it adequately demonstrates attainment for the Chicago-Gary-Lake County ozone nonattainment area. A complete discussion of the budget demonstration can be found at 66 FR 34382.

*I. Does the Illinois Part 217 $NO_X$ Emissions Control Program Meet All of the Federal $NO_X$ SIP Call Requirements?*

No. The Part 217 rule only addresses the $NO_X$ controls for EGUs. Although these reductions are significant, they are not sufficient to guarantee that the State will achieve the $NO_X$ emission budget established in the $NO_X$ SIP Call. To achieve the acceptable $NO_X$ emission level of the $NO_X$ SIP Call, the State adopted additional emission control regulations for non-EGUs and Cement Kilns. The adequacy of the full set of reductions to satisfy the $NO_X$ SIP Call requirements is addressed in separate rulemaking on these sources and on the budget demonstration (See 66 FR 34382). Other previously identified deficiencies and how Illinois addressed them are discussed below.

*J. What Deficiencies Were Noted in Illinois' $NO_X$ Emissions Control Rules and Has Illinois Satisfactorily Addressed Them?*

We reviewed the State's draft Part 217 $NO_X$ trading program rule for EGUs and gave the State comments on deficiencies. EPA again reviewed the rule when it was submitted in February 23, 2001, and found the State made many of the corrections suggested by us. These deficiencies were corrected by Illinois and the State included these changes in an errata sheet filed with the Illinois Pollution Control Board during its hearing process. We again reviewed the rule and the legislation following the action by the Legislature which addressed the compliance delay language and found this portion addressing compliance delay to be acceptable.

*Section 217.101(a)*

The reference to Method 7 is questionable. Method 7 is a one time stack test. The rule should require Continuous Emissions Monitoring Systems (CEMS). Additionally, there is a more recent method than method 7. It is method 7e. The State made this correction in its final rule. The State's rule incorporates by reference EPA's measurement methods, it also refers to 40 CFR part 75. Table 1 lists the elements of EPA's model rule which the State incorporated by reference. Included in that list is part 75 Continuous Emissions Monitoring which the State requires for all sources subject to this rule. It is clear that the State's intent in this section is to see that all sources use CEMs as the exclusive requirement for measuring emissions.

*Section 217.754(c) Low-Emitter Status*

If a unit receives low emitter status, it will not be required to monitor emissions. The unit will need only to report operating hours. In Subpart W at 217.754(c) of the State's rule, which requires potential $NO_X$ emissions to be calculated by either part 75 or by the default emissions rate, the rule should require only the use of default emissions rates. However, in the State's final rule this recommendation was not followed. The intent of this portion of the rule is to provide a unit two alternatives to qualify for low emitter status. The first alternative requires a unit to take permit limits on its operating hours and potential $NO_X$ mass emission in order to ensure that the units potential $NO_X$ mass emission do not exceed 25 tons during the ozone season.

The second alternative allows a unit with monitored ozone season $NO_X$ emissions of 25 tons or less, as monitored according to part 75, to qualify for low emitter status. Under this alternative, a unit must again take a permit limit restricting ozone season operating hours and potential $NO_X$ mass emissions during the season to 25 tons or less.

The State goes on to define the use of the term ''potential $NO_X$ mass emissions'' as it is used in this section. In Subpart W, section 217.754(c), this term is first used in paragraph (c)(1)(B), stating that the source's permit must ''Limit the EGU's potential $NO_X$ mass emissions * * * to 25 tons or less.'' Under paragraph (c)(1)(D), the permit must in addition ''Require that the EGU's potential $NO_X$ mass emissions be calculated [either by monitoring according to 40 CFR 75 or by multiplying maximum potential hourly emissions times hours of operation].'' Consequently, ''potential emissions'' must be interpreted to mean the emissions determined according to whichever method is used under section 217.754(c)(1)(D). Since the measurements under 40 CFR 75 measure actual emissions, a low emitting source using such monitoring would rely largely on actual emissions data to evaluate compliance with the permit limit on potential $NO_X$ mass emissions.

*Section 217.756*

This section repeats section 96.6 of 40 CFR part 96, which is already incorporated by reference in the State rule. EPA recommended section 217.756 be deleted. The State chose to leave this section in its rule as a means of providing fuller notice to sources in Illinois subject to the rule applicable to them.

*(d)(3).* This subsection is discussed in detail in previous pages of this action and was the main reason for EPA's August 31, 2000, proposed disapproval in the alternative (See 65 FR 52967). In a June 27, 2001, letter to EPA, IEPA informed EPA that on June 22, 2001, the Governor signed into law House Bill 1599 which specifies a May 31, 2004, compliance date.

*(g).* Effect on other authorities—We recommended that rather than referencing 40 CFR 96.4(b), the rule should reference 217.754(c). The State agreed and made the change.

*Section 217.762*

Throughout this section, when the State addressed allocation of allowances from the new source set-aside, it uses the phrase ''to budget EGUs that have

not fully operated for the full 2000 control period (italics supplied).'' Read literally, it could authorize an existing source that was shut down for part of a control period to receive allowances from the new source set-aside. We recommended the State clarify this, perhaps by replacing the italicized phrase with the phrase ''commenced commercial operation.'' This latter term is used in section 217.768. In order to use consistent terminology, the State made the recommended change.

*Section 217.768*

*(i)* In this section the State should clarify the phrase ''* * * less than one-half of the control period in 2002 * * *''. EPA recommended this language be more specific. The State changed this to ''* * * but have operated for 76 or fewer days of the control period in 2003 * * *'' This changed not only the language to clarify the meaning but also changed the year to reflect the court change in the date of compliance.

*Section 217.770*

*(a)* The unit's monitoring data availability was listed at 80 percent. In the State's final rule data availability was changed to 90 percent, as in the model Federal rule. The phrase, the ''* * * control period prior to the control period * * *'' is ambiguous due to the double reference to ''control period.'' This was made clear in the final rule. The State also revised the years in which early reduction credits can be earned as reflected in the change in the date by which sources must be in compliance.

*Section 217.774 Opt-in Units*

*(a)(2)* By its terms, the provisions authorize units to opt-in only if all of their emissions are vented to a stack and monitor in accordance with part 75.

*Section 217.776*

*(b)* Monitoring data availability was 80 percent in the State's proposed rule. The State changed this to 90 percent in it's final rule.

*Section 217.778*

*(b)(3)* In the State's final rule this section was changed to (b)(2). The rule referred to ''any allowances allocated to that unit under section 217.782 of this subpart for *the control period* * * * (emphasis added).'' We recommended the emphasized term be revised to read ''* * * the same or earlier control period * * *'' The State's final rule includes this recommended change.

*Section 217.780*

Throughout this section, the State refers to a unit which changes its regulatory status and becomes a budget opt-in unit. In fact, this provision is meant to address units which change their regulatory status and become budget units. EPA recommended in this section the phrase ''* * * budget opt-in unit * * *'' be replaced with the phrase ''* * * budget EGU * * *''. The State did not make this recommended change as it believed the change was not necessary. The State retained the terminology in order to keep it straight for purposes of Illinois sources that are opt-in units, not ones that are required to be in the trading program. As they are opt-in units, they can opt out again. The State believes the meaning of the phrase from any point of view is not ambiguous. We agree, and this is not an approvability issue.

*Section 217.782*

*(b)(2)(B)* This section was unclear and referred to the year of the control period not to the year prior to the year of the control period. The State agreed and made the change in the final rule.

## III. Response to Public Comments

EPA proposed to approve the Illinois EGU rule on August 31, 2000 (65 FR 52967). We received 2 comments on the proposal. One comment was from the State of Missouri Department of Natural Resources, Division of Air Quality (DAQ). This comment dated October 2, 2000, was a letter requesting that EPA extend the comment period by 30 days so that DAQ would have sufficient time to review the Federal proposal and its potential impacts on Missouri and submit substantive comments to EPA. No follow-up comments on the proposal were received from the DAQ, and its request to extend the comment period was subsequently withdrawn.

The second comment is from the State of Illinois and was received in a letter dated September 29, 2000. These comments responded to specific issues EPA noted in the August 31, 2000, proposal including a comment on proposed State rule concerning the compliance delay language.

## IV. Final Action

*What Action is EPA Taking Today?*

EPA is taking final action today to approve Illinois' Administrative Code 217, Subpart W, $NO_X$ Trading Program for Electrical Generating Units. These rules require reductions in emissions of nitrogen oxides from large EGUs and require a statewide cap on $NO_X$ emissions, consistent with the requirements of the $NO_X$ SIP Call. 63 FR 57355 (October 27, 1998)

## V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999), 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. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission,

to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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. section 804(2). This rule will be effective December 10, 2001.

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 January 7, 2002. 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 25, 2001.

**Jo Lynn Traub,**

*Acting Deputy Regional Administrator, Region 5.*

For the reasons stated in the preamble, 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. *et seq.*

## Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(157) to read as follows:

**§ 52.720 Identification of plan.**

* * * * *

(c) * * *

(157) On May 8, 2001, the Illinois Environmental Protection Agency submitted revisions to 35 Ill. Adm. Code 217, Subpart W: NO[x] Trading Program for Electrical Generating Units with a request that these rules be incorporated into the Illinois State Implementation Plan. On June 11, 2001, the Illinois EPA submitted Section 9.9(f) of the Illinois Environmental Protection Act as revised by Public Act 92–012 (formerly House Bill 1599) which was approved by both Houses of the Illinois General Assembly on June 7, 2001, approved by the Governor on June 22, 2001, and became effective on July 1, 2001. Section 9.9(f) requires a May 31, 2004 final compliance date for 35 Ill. Adm. Code 215, Subparts T, U and W. This compliance date replaces the compliance date contained in Section 217.756(d)(3).

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 217 Nitrogen Oxides Emissions, Subpart W: NO[x] Trading Program for Electrical Generating Units except for 217.756(d)(3) which has been superseded by Section 9.9(f) of the Illinois Environmental Protection Act. Added at 25 Ill. Reg. 128, January 25, 2001, effective December 26, 2000.

(B) Section 9.9(f) of the Illinois Environmental Protection Act. Adopted by both Houses of the Illinois General Assembly as part of Public Act 92–0012 (previously House Bill 1599) on May 31, 2001, approved by the Governor of Illinois on June 22, 2001, effective July 1, 2001.

[FR Doc. 01–27932 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[IN 131b; FRL–7077–7]**

## Approval and Promulgation of Air Quality Implementation Plans; Indiana; Oxides of Nitrogen Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On March 30, 2001, Indiana submitted and requested parallel processing of its proposed plan to control emissions of oxides of nitrogen ( $NO_X$) throughout the State. On July 2, 2001, through parallel processing, EPA proposed approval of the plan provided Indiana revise its proposed rule consistent with the discussion in EPA's proposal. Indiana did so and submitted its final plan to EPA on August 20, 2001 with a supplement on September 19, 2001. The plan consists of two rules, a budget demonstration, and supporting documentation. The plan will contribute to attainment and/or maintenance of the 1-hour ozone standard in several 1-hour ozone nonattainment areas including the Chicago-Gary-Lake County and Louisville areas. Indiana developed its plan, which focuses on electric generating units, large industrial boilers, turbines and cement kilns, to achieve the majority of reductions required by EPA's October 27, 1998, $NO_X$ State Implementation Plan (SIP) Call. As of May 1, 2004, Indiana's plan will also provide reductions at units currently required to make reductions under the EPA's Clean Air Act (CAA) Section 126 rulemaking. EPA is approving this plan as a SIP revision fulfilling the $NO_X$ SIP Call ''Phase I'' requirements. EPA is also finding Indiana's submittal on August 20, 2001 and supplemented on September 19, 2001 complete in this **Federal Register** action. Through this action, both the sanctions clock and EPA's Federal Implementation Plan (FIP) obligation are terminated.

**EFFECTIVE DATE:** This rule will be effective December 10, 2001.

**ADDRESSES:** Copies of the State's submittals and materials relevant to this rulemaking are available for public inspection during normal business