§ 630.108 Preparation of agreement.

(a) The STD shall prepare a project agreement for each Federal-aid project.

(b) The STD may develop the project agreement in a format acceptable to both the STD and the FHWA provided the following are included:

(1) A description of the project location including State and project termini;

(2) The Federal-aid project number;

(3) The work covered by the agreement;

(4) The total project cost and amount of Federal funds under agreement;

(5) The Federal-aid share of eligible project costs expressed as either a pro rata percentage or a lump sum as set forth in § 630.106(f)(1);

(6) A statement that the State accepts and will comply with the agreement provisions set forth in § 630.112;

(7) A statement that the State stipulates that its signature on the project agreement constitutes the making of the certifications set for in § 630.112; and

(8) Signatures of officials from both the State and the FHWA, and the date executed.

(c) The project agreement should also document, by comment, instances where:

(1) The State is applying amounts of credits from special accounts (such as the 23 U.S.C. 120(j) toll credits, 23 U.S.C. 144(n) off-system bridge credits and 23 U.S.C. 323 land value credits) to cover all or a portion of the normal percent non-Federal share of the project; and

(2) The project involves other arrangements affecting Federal funding or non-Federal matching provisions, including tapered match, donations, or use of other Federal agency funds, if known at the time the project agreement is executed.

(3) The State is claiming finance related costs for bond and other debt instrument financing (such as payments to States under 23 U.S.C. 122).

(d) The STD may use an electronic version of the agreement as provided by the FHWA.

(Approved by the Office of Management and Budget under control number 2125–0529)

§ 630.110 Modification of original agreement.

(a) When changes are needed to the original project agreement, a modification of agreement shall be prepared. Agreements should not be modified to replace one Federal fund category with another unless specifically authorized by statute.

(b) The STD may develop the modification of project agreement in a format acceptable to both the STD and the FHWA provided the following are included:

(1) The Federal-aid project number and State;

(2) A sequential number identifying the modification;

(3) A reference to the date of the original project agreement to be modified;

(4) The original total project cost and the original amount of Federal funds under agreement;

(5) The revised total project cost and the revised amount of Federal funds under agreement;

(6) The reason for the modifications; and,

(7) Signatures of officials from both the State and the FHWA and date executed.

(c) The STD may use an electronic version of the modification of project agreement as provided by the FHWA.

§ 630.112 Agreement provisions.

(a) The State, through its transportation department, accepts and agrees to comply with the applicable terms and conditions set forth in title 23, United States Code, the regulations issued pursuant thereto, the policies and procedures promulgated by the FHWA relative to the designated project covered by the agreement, and all other applicable Federal laws and regulations.

(b) Federal funds obligated for the project must not exceed the amount agreed to on the project agreement, the balance of the estimated total cost being an obligation of the State. Such obligation of Federal funds extends only to project costs incurred by the State after the execution of a formal project agreement with the FHWA.

(c) The State must stipulate that as a condition to payment of the Federal funds obligated, it accepts and will comply with the following applicable provisions:

(1) *Project for acquisition of rights-of-way.* In the event that actual construction of a road on this right-of-way is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the project is authorized, the STD will repay to the FHWA the sum or sums of Federal funds paid to the transportation department under the terms of the agreement. The State may request a time extension beyond the 20-year limit with no repayment of Federal funds, and the FHWA may approve this request if it is considered reasonable.

(2) *Preliminary engineering project.* In the event that right-of-way acquisition for, or actual construction of, the road for which this preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the STD will repay to the FHWA the sum or sums of Federal funds paid to the transportation department under the terms of the agreement. The State may request a time extension for any preliminary engineering project beyond the 10-year limit with no repayment of Federal funds, and the FHWA may approve this request if it is considered reasonable.

(3) *Drug-free workplace certification.* By signing the project agreement, the STD agrees to provide a drug-free workplace as required by 49 CFR part 29, subpart F. In signing the project agreement, the State is providing the certification required in appendix C to 49 CFR part 29, unless the State provides an annual certification.

(4) *Suspension and debarment certification.* By signing the project agreement, the STD agrees to fulfill the responsibility imposed by 49 CFR 29.510 regarding debarment, suspension, and other responsibility matters. In signing the project agreement, the State is providing the certification for its principals required in appendix A to 49 CFR part 29.

(5) *Lobbying certification.* By signing the project agreement, the STD agrees to abide by the lobbying restrictions set forth in 49 CFR part 20. In signing the project agreement, the State is providing the certification required in the appendix to 49 CFR part 20.

Subpart C—[Removed and Reserved]

3. In part 630, remove and reserve subpart C.

[FR Doc. 00–22297 Filed 8–30–00; 8:45 am]
BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL203–1; FRL–6862–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Illinois submitted a proposed rule to control emissions of oxides of nitrogen (NO_X). The proposed rule is to provide NO_X emission reductions to support attainment of the 1-hour ozone standard in the Metro-East/St. Louis ozone nonattainment area and will

contribute to attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area. Illinois' rule, which focuses on electric generating units, also represents a key portion of the State's response to EPA's October 27, 1998 NO_X SIP Call. EPA expects Illinois to adopt other rules to regulate NO_X emissions from other source types, and expects Illinois to submit an analysis of the adequacy of the full set of rules in conjunction with the other rules for addressing the NO_X SIP Call. Therefore, this EPA rulemaking does not address whether Illinois' rule (with or without rules for other source types) limits NO_X emissions to the extent required under the NO_X SIP Call. Through parallel processing, EPA is proposing to approve the rule, provided Illinois corrects identified deficiencies in its rule consistent with this notice. Most significantly, the rule has a provision that defers the compliance date of the rule beyond May 1, 2003, if any of certain Midwestern States do not have State NO_X regulations approved by the EPA or do not have effective federally promulgated NO_X regulations by the end of 2002. EPA proposes to approve the State's rule provided Illinois removes this provision from the final adopted rule by December 31, 2000. EPA also proposes in the alternative to disapprove Illinois' rule if this provision remains in the final adopted rule or if Illinois fails to address other significant identified deficiencies. Significant changes in the NO_X control rule from the version included in the State's draft rule submittal, other than those changes resulting from corrections to deficiencies noted in this proposed rulemaking, will result in a new proposal of the rulemaking on Illinois' subsequent submittal.

DATES: Written comments must be received on or before October 2, 2000.

ADDRESSES: Written comments should be sent to: Jay Bortzer, Acting Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the State's submittals and materials relevant to this proposed rulemaking are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (18th floor). (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, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–6084, E-Mail Address: paskevicz.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

In the following questions and answers, the term ''you'' refers to the reader of this proposed rule and ''we,'' ''us,'' or ''our'' refers to the EPA.

I. Background

A. What Clean Air Act requirements apply to or led to the State's submittal of the NO_X emission control regulations?

The Clean Air Act (Act or CAA) 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, required 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 St. Louis ozone nonattainment area (subsequently also referred to as the Metro-East/St. Louis ozone nonattainment area to denote the bi-state nature of the area) was classified as moderate, giving it an attainment

deadline of November 15, 1996. The Metro-East/St. Louis ozone nonattainment area is defined (40 CFR 81.314 and 81.326) to contain Madison, Monroe, and St. Clair Counties in Illinois, and Franklin, Jefferson, St. Charles, and St. Louis Counties and St. Louis City in Missouri.

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. Section 182(j)(1)(B) requires the use of photochemical grid modeling or other methods judged to be at least as effective to demonstrate attainment of the ozone NAAQS in multi-state moderate ozone nonattainment areas. 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 proposed rulemaking are, in part, intended to meet the requirements for the attainment demonstrations for the Metro-East/St. Louis and Chicago-Gary-Lake County ozone nonattainment areas.

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. 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 of 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 Regulations?

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 Metro-East/St. Louis and Chicago-Gary-Lake County ozone nonattainment areas as discussed below.

The Metro-East/St. Louis and Chicago-Gary-Lake County nonattainment areas have not attained and continue to violate the 1-hour ozone standard. The States of Illinois and Missouri have worked cooperatively to provide the EPA with an ozone attainment demonstration for the Metro-East/St. Louis nonattainment area. 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 both of these ozone attainment demonstrations, 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 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 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 of 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, electricity 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-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 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 established by jurisdiction were based, 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.

As a moderate ozone nonattainment area, the Metro-East/St. Louis nonattainment area was not included in the two-phase approach established in EPA's March 2, 1995 memorandum. The EPA, however, recognizes that some moderate ozone nonattainment areas may also have been significantly impacted by ozone transport from upwind areas, making attainment of the 1-hour ozone NAAQS difficult through the imposition of only local emission control measures. On July 16, 1998, EPA established a policy that allowed for a deferral of the attainment date for areas significantly impacted by ozone transport and where certain conditions are met. The EPA published this policy (Extension Policy) in the **Federal Register** on March 25, 1999. 64 FR 14441.

Under the Extension Policy, the EPA would defer final findings on the attainment status for moderate nonattainment areas and would instead allow these areas to submit attainment SIPs that include boundary reductions in ozone achieved by controls measures in upwind areas. The attainment date for these areas would be the date by which the relevant upwind areas will have reduced emissions, reducing the transported ozone. Along this line, on March 18, 1999, EPA published a proposed rule titled ''Clean Air Reclassification and Notice of Potential Eligibility for Attainment Date Extension, Missouri and Illinois, St. Louis Nonattainment Area; Ozone.'' In that proposed rule, the EPA proposed to defer final action on a proposed finding of nonattainment for the Metro-East/St. Louis nonattainment (which would have resulted in a bump-up of the area to serious nonattainment for ozone) until it could ascertain whether the attainment date should be extended for the area based on an application of the Extension Policy.

In an October 1999 draft supplement to its 1994 attainment demonstration for the Metro-East/St. Louis nonattainment area, the State of Illinois committed to implementing state-wide NO_X emission reductions from EGUs. Illinois officially submitted the adopted attainment demonstration supplement to the EPA in February 2000. The final attainment strategy for the Metro-East St. Louis area assumed that the 23 jurisdictions affected by the EPA NO_X SIP call, including the eastern one-third of Missouri would limit NO_X emissions from large EGUs beginning in May 2003 to an emission rate of no more than 0.25 pounds NO_X/mmBtu of heat input. Large EGUs in the western two-thirds of Missouri would be limited to a NO_X emission rate of no more than 0.35 pounds NO_X per mmBtu of heat input. The State's photochemical grid modeling supported attainment of the 1-hour ozone NAAQS in the Metro-East/St. Louis nonattainment area in May 2003 based on these regional NO_X reductions. The EPA proposed to conditionally approve this attainment demonstration on April 17, 2000, contingent, in part, on the States of Illinois and Missouri submitting regional (statewide) draft NO_X rules by June 2000 and completing adoption of these rules and submitting them in final form to the EPA by December 2000. 65 FR 20404.

[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.

On April 30, 1998, 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 proposed 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 Regulations?

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 rulemaking before the United States Court of Appeals for the District of Columbia Circuit. See *Michigan* vs. *EPA,* 213 F.3d 663 (D.C. Cir. 2000). The Court, on May 25, 1999, stayed the obligation of State's 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 rule. The Court, however, vacated the rule 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 must be submitted to the EPA by October 30, 2000.

The State of Illinois has indicated that the NO_X regulations reviewed in this proposed rulemaking are intended primarily to meet the emission reduction needs of the Metro-East/St. Louis ozone attainment demonstration and secondarily to meet a portion of the NO_X emission budget established in the NO_X SIP call for Illinois. The State, however, needs to take further action to develop a submission in response to the NO_X SIP call emission budget, and, in this action, we are not reviewing the EGU NO_X rule for the purposes of determining whether the EGU NO_X rule is sufficient to allow the State to meet the NO_X SIP call emission budget.

II. Summary of the State Submittal

A. When Were the NO_X Emission Control Regulations 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 are acceptable to EPA as a schedule, however the end date of final approval (final rule adoption) by the Illinois Pollution Control Board (IPCB) cannot precisely be established. Finally, 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.

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

The State based the draft rule primarily on EPA's part 96 Trading Rule. Many sections of part 96 are incorporated by reference (IBR) into the draft 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	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.

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

40 CFR Part	Section	Section Title/Subject
	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.
	Subpart D:	
	96.30	Compliance certification report.
	96.31	Permitting authority's and Administrator's action on compliance certification.
	Subpart F:	
	96.50	NO_X Allowance Tracking System accounts.
	96.51	Establishment of accounts.
	96.52	NO_X Allowance Tracking System 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
	Subpart G:	
	96.60	NO_X allowance transfers.
	96.61	EPA recordation.
	96.62	Notification
	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 of the rule, the rule contains a number of other sections or components. Table 2 lists these sections/components. Some of these sections/components 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.

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

Subpart/Section	Title	Comparable federal regulation/note
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 the various rule sections listed in table 2 above.

Subpart B, Section 211

A number of new definitions would be added to an existing part 211 of Illinois' air pollution rules. Definitions of the following terms would be 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 proposed rulemaking.

Subpart A

Section 217.100 Scope and Organization

This section specifies the purpose of the State's NO_X rule and limits its scope to prevent problems with existing rules.

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 proposes to amend 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 proposed 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 fire 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 depending on whether the units are existing or new units.

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 to account for the source's overdraft account by

November 30 of each year starting in the compliance year (1 allowance equals 1 ton of 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 States 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 (d)(3) contains a provision that defers the compliance date for the program beyond May 1, 2003, if any of the neighboring States and other States in Region 5 subject to the NO_X SIP Call do not have fully approved regulations or effective federally promulgated regulations by the end of 2002. This raises an unacceptable risk that the rule as proposed by Illinois would not require NO_X emission controls by the time they are needed primarily for purposes of attainment in the Metro-East/St. Louis area, by May 1, 2003, to avoid a bump-up of the area to serious nonattainment of the 1-hour ozone standard or for purposes of the NO_X SIP Call.

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 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 segregable 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 2003 through 2005, 5 percent of the 30,701 allowances will be allocated to a new source set-aside. For the years 2006 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 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 2006 through 2009 and a ''100 percent flex'' approach in 2010 and thereafter (consult this section of the rule for the details of these approaches). The allocations for 2003 through 2005 are specified in subsection (a).

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 2003 through 2005, any allowances that are not allocated to new sources will be allocated to certain EGUs. After January 1, 2003, 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

The IEPA proposes to add this section that allows budget EGUs to request early reduction credits (ERCs) if they reduce NO_X emissions in the 2001 or 2002 control periods. This section sets forth the various requirements associated with the generation and recording of these ERCs.

C. Components of the Draft Regulations

1. What geographic regions and sources are affected by the draft regulations?

The proposed 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 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 proposed 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. The State believes the rule will bring about attainment of the 1-hour ozone standard in the Metro-East/St. Louis nonattainment area. With regard to the attainment demonstration for the Chicago-Gary-Lake County nonattainment area, the State can only

note that its analysis thus far will '' * * * likely demonstrate attainment * * *'' of the 1-hour ozone standard. The State will complete its air quality modeling and submit its final attainment demonstration to EPA in December 2000. Finally, 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 proposes to incorporate by reference the EPA Part 96 monitoring, Recordkeeping, and reporting requirements for the affected sources. However, in section 217.770(a) of the rule, which addresses early reduction credits for budget EGUs, the rule provides 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) addresses monitoring system availability of '' * * * not less than 80 percent * * *''. This differs with the EPA requirement for monitoring in section 96.84(b) of 40 CFR part 96, which requires 90 percent availability.

4. What is the compliance/implementation deadline for affected sources?

The Illinois rule has a compliance date that is contingent upon implementation of NO_X rules in other States. Section 217.756 states 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 EPA * * *, or a final FIP for ozone promulgated by EPA is effective.'' The relevant other States are Indiana, Michigan, Ohio, Missouri, and Kentucky. This language provides for compliance with relevant requirements by May 1, 2003, except that a later compliance date will apply if any of these five other States does not have adequate NO_X regulations either as approved State regulations or as effective promulgated Federal regulations by the end of 2002.

This language raises significant concerns. To avoid reclassification of the St. Louis area to serious nonattainment, Illinois must submit rules that provide adequate NO_X emission reductions by May 1, 2003. Also, 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 1, 2003. The language in Illinois' proposed rule would not achieve either of these purposes if problems arise in any of the five States, delaying approval of their NO_X rule until after the end of 2002 or the promulgation of an effective FIP after 2002. Of particular concern is the dependence on the timetable for Missouri, since, unlike Illinois, the Court remanded the NO_X SIP Call for Missouri. This will result in Missouri submitting NO_X SIP call-compliant regulations on a later schedule than other NO_X SIP call States. The EPA rulemaking on such rule may be sufficiently delayed, such that the language of the Illinois NO_X rule would delay the compliance date for the rule beyond the attainment date established in the attainment demonstration for the St. Louis area and beyond the required compliance date under the NO_X SIP call.

EPA is also concerned about other aspects of this provision of Illinois rule. The language in Ilinois' rule makes the compliance date contingent on adoption/approval or promulgation of ''regulations to implement NO_X trading programs [and other required reductions].'' While EPA is mandating achievement of specified amounts of NO_X emissions control, EPA is not mandating that States adopt provisions for emissions trading. Therefore, if a relevant State opts not to implement trading, Illinois' language suggests a permanent compliance date deferral.

D. Will the Illinois NO_X Trading Program Meet the Federal NO_X Budget?

Illinois' rule on EGUs is a key element of the set of rules Illinois is expected to submit to satisfy the reduction requirements for NO_X emissions that EPA's NO_X SIP Call mandates for Illinois. In fact, Illinois' EGU rule establishes a cap on emissions derived from the NO_X emission limit (0.15 pounds per million BTUs of heat input) that EPA used in calculating Illinois' budget. Nevertheless, this rulemaking does not evaluate the rule on EGUs as to whether it is an adequate step toward achieving the NO_X SIP Call reductions or whether the full set of expected rules will achieve the reductions.

Illinois has not yet submitted a detailed assessment of whether its full set of rules will assure achievement of the reductions. EPA expects such a submittal in conjunction with the other rules that Illinois must still submit. EPA will rulemake on the adequacy of Illinois' rules for achieving the State's NO_X SIP call budget as part of rulemaking on these other submittals.

E. What Public Review Opportunities Are/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 standard attainment demonstrations. 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 Regulations From the Standpoints of the Lake Michigan and the Metro-East/St. Louis Ozone Attainment Demonstrations?

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 State did not commit to develop regional NO_X controls for specific source categories or for specific emission control levels. The attainment demonstration, which has not been submitted in final form, did note 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. The States (Illinois, Indiana, and

Wisconsin, and the Lake Michigan Air Directors Consortium) are currently modeling the possible impacts of the NO_X SIP call for inclusion in the final attainment demonstration submittals for the Lake Michigan area.

As noted in the proposed rulemaking for the Metro-East/St. Louis ozone nonattainment area (65 FR 20404), the attainment demonstration for this nonattainment area relies on NO_X emission controls from large EGUs in both Illinois and Missouri. As noted above, the attainment demonstration assumes that NO_X emission rates for large EGUs state-wide in Illinois will be limited to a level of 0.25 pounds NO_X/mmBtu of heat input or less. The attainment demonstration did not assume additional NO_X emission controls beyond those required by the Clean Air Act for a moderate ozone nonattainment area.

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 proposal.

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

Aside from the implementation delay problem and other deficiencies discussed elsewhere in this document, EPA proposes to find that the part 217 NO_X emissions control program meets the emission reduction needs of the ozone attainment demonstration for Metro-East/St. Louis ozone nonattainment area which EPA has recently proposed to approve. The States of Illinois and Missouri have completed additional revisions in the attainment demonstration which will be addressed in a separate rulemaking. These additional revisions have not affected the emission reduction requirements considered in the attainment demonstration addressed in EPA's proposed rule on April 17, 2000 (65 FR 20404).

Until Illinois and other Lake Michigan States complete the attainment demonstration for the Lake Michigan area, it cannot be determined whether the NO_X emissions reductions from the NO_X rule reviewed here will be adequate to lead to a demonstration of attainment for the Chicago-Gary-Lake County ozone nonattainment area.

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 will have to adopt additional emission control regulations or further tighten the emission limits for EGUs. The adequacy of the full set of reductions to satisfy the NO_X SIP Call requirements will be addressed in separate rulemaking. Other deficiencies are noted below.

J. What Deficiencies Were Noted in Illinois' NO_X Emissions Control Regulations, and Do Any of These Deficiencies Constitute a Serious Disapprovability Issue?

EPA reviewed the State's draft part 217 NO_X emissions control rule and offers the following comments on deficiencies found in the draft rule, many of which are minor and should be readily correctable in the final rule adoption process. These deficiencies must be corrected before the EPA can give final approval to the Illinois NO_X rule.

Section 217.101

(a) The reference to Method 7 is questionable. Method 7 is a one time stack test. The rule should require Continous Emissions Monitoring System (CEMS). Additionally, there is a more recent method than method 7. It is method 7e.

(c) Low-emitter status. If a unit receives low emitter status, it will not be required to monitor anymore: it will need only to report operating hours. Therefore, item D, which requires potential NO_X emissions to be calculated by either part 75 or by the default emissions rate, should require only the use of default emissions rates.

Section 217.756

This section repeats section 96.6 of 40 CFR part 96, which is already incorporated by reference. Therefore, section 217.756 could be deleted.

(d)(3) This subsection is discussed in detail in the front of this proposal and is the main reason for EPA's proposed disapproval in the alternative. Basically, this rule as written will result in potential delay regarding implementation of elements of the trading program. This section provides opportunity for delay in implementation of the program until all States in EPA Region 5, and States on the Illinois border have their NO_X SIPs approved by EPA or are covered by a FIP in full effect. As written, section 217.756(d)(3) is a major deficiency in the State's plan.

(g) Effect on other authorities—Rather than referencing 40 CFR 96.4(b), the rule should reference 217.754(c).

Section 217.762

Throughout this section, when the State addresses 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. The State should clarify, perhaps by replacing the italicised phrase with the phrase ''commenced commercial operation.'' This latter term is used in section 217.768. The regulations should use consistent terminology.

Section 217.768

(i) In this section the State should clarify the phrase '' * * * less than one-half of the control period in 2002 * * *''. Specifics on units and criteria are needed to define this phrase.

Section 217.770

(a) The unit's monitoring data availability should be 90 percent, not 80 percent. The phrase, the '' * * * control period prior to the control period * * *'' is ambiguous due to the double reference to ''control period.'' This phrase should be clarified.

Section 217.774 Opt-in Units

(a)(2) By its terms, the provisions authorize units to opt-in even if all of their emissions are not vented to a stack. This provision should be revised so that only units that vent all emissions to a stack may opt-in. 40 CFR part 96 contains this limit. In addition, part (a) of this provision limits opt-ins to stationary boilers, combustion turbines, or combined cycle systems—all of which vent to a stack.

Section 217.776

(b) Monitoring data availability should be 90 percent, not 80 percent.

Section 217.778

(b)(3) The rule refers to ''any allowances allocated to that unit under section 217.782 of this subpart for *the control period* * * * (emphasis

added).'' The emphasized term should be revised to read ''the same or earlier control period.''

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. Throughout this section the phrase '' * * * budget opt-in unit * * *'' should be replaced with the phrase '' * * * budget EGU * * *''.

Section 217.782

(b)(2)(B) This should refer to the year of the control period not to the year prior to the year of the control period.

III. Proposed Action

A. What Action Is EPA Proposing Today?

EPA objects to the provision in Illinois' rule that defers the compliance date for the program beyond May 1, 2003, if any of the neighboring States and other States in Region 5 subject to the NO_X SIP Call do not have fully approved regulations or effective federally promulgated regulations by the end of 2002. EPA has also noted other concerns with the language of this provision and has noted other deficiencies in the rule.

EPA believes that Illinois can adopt a rule that would ensure compliance by May 1, 2003. In its current draft form, which creates the potential for compliance delays beyond May 1, 2003, the drafted rule is unacceptable because it could cause compliance delays beyond the date currently established by the State for attainment of the 1-hour ozone standard in the St. Louis area. EPA proposes to approve the rule if the State adopts a final rule which assures compliance with NO_X emission controls required by the rule by May 1, 2003 and corrects the other deficiencies discussed in this document. In the alternative, EPA proposes to disapprove Illinois' rule if the State adopts the rule in its current drafted form.

B. What Happens if Illinois Significantly Changes the Regulations During the Final Adoption Process?

Since the EPA is proposing to rulemake on the Illinois NO_X rule under a parallel process, it must be recognized that a possibility exists that the State of Illinois will adopt a final version of the rule which differs from the version of the rule reviewed in this proposed rule.

If the State makes significant changes in the rule as a result of its own rule public comment and adoption process and based on further deliberation and/or on comments other than based on the deficiencies noted above, the EPA will re-evaluate the rule through a new proposed rule. If, on the other hand, the State only makes changes in the rule to correct the deficiencies addressed in this proposed rule consistent with the analysis presented here, the EPA will proceed to final rulemaking.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from the Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that may have a disproportionate effect on children.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not 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, 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–22385 Filed 8–30–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket OR–84–7299b; FRL–6858–2]

Approval and Promulgation of State Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) proposes to approve the revisions to Oregon's State Implementation Plan which were submitted on November 10, 1999. These revisions consist of: Approval of the 1993 carbon monoxide periodic emissions inventory for Grants Pass, Oregon; approval of the Grants Pass carbon monoxide maintenance plan; and redesignation of Grants Pass from nonattainment to attainment for carbon monoxide.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by October 2, 2000.

ADDRESSES: Written comments should be addressed to Debra Suzuki, Office of Air Quality (OAQ–107), at the EPA Regional Office listed below.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Debra Suzuki, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–0985.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: August 17, 2000.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–6862–8]

Extension of Comment Period for National Pollutant Discharge Elimination System; Regulations Addressing Cooling Water Intake Structures for New Facilities; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: EPA is extending the comment period for the proposed rule addressing cooling water intake structures for new facilities. The proposed rule was published in the **Federal Register** on August 10, 2000 (65 FR 49060). The comment period for the proposed rule is extended by 30 days, ending on November 9, 2000. In light of issues raised by the regulated community and the plaintiffs in the lawsuit establishing the schedule for this action, EPA agrees that extending the comment period to 90 days is appropriate due to the complexity and