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. 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. 804(2). This rule will be effective January 7, 2002 unless EPA receives adverse written comments by December 10, 2001.

Under section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607, 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, Review of New Sources and Modifications, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 10, 2001.

David A. Ullrich,

Acting 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. 7401 *et seq.*

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(102) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(102) On February 9, 2001 the Wisconsin Department of Natural Resources submitted a site specific SIP revision in the form of a February 5, 2001 Environmental Cooperative Agreement for incorporation into the federally enforceable State Implementation Plan. The Cooperative Agreement establishes an exemption for pre-construction permitting activities for certain physical changes or changes in the method of operation at the Wisconsin Electric Power Company, Pleasant Prairie Power Plant located at 8000 95th Street, Pleasant Prairie, Wisconsin. This Environmental Cooperative Agreement expires on February 4, 2006.

(i) Incorporation by reference.

The following provisions of the Environmental Cooperative Agreement between the Wisconsin Electric Power Company and the Wisconsin Department of Natural Resources signed on February 5, 2001: The provisions in Section XII.C. Permit Streamlining concerning Construction Permit Exemption for Minor Physical or Operational Changes. These provisions establish a construction permit exemption for minor physical or operational changes at the Wisconsin Electric Power Company Pleasant Prairie Power Plant. This Environmental Cooperative Agreement expires on February 4, 2006.

[FR Doc. 01–27829 Filed 11–7–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL208–2, IL209–2; FRL–7077–9]

Approval and Promulgation of Implementation Plans; Illinois NO_X Regulations

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving Illinois regulations to control emissions of nitrogen oxides (NO_X). This action approves rules regulating cement kilns and rules regulating industrial boilers and turbines. USEPA is conducting separate rulemaking on a third set of rules regulating electricity generating units. USEPA concludes in this action that these three sets of rules satisfy the requirements known as the NO_X SIP Call.

USEPA proposed this action on June 28, 2001, at 66 FR 34382. USEPA received comments from three commenters. The Illinois Environmental Protection Agency (Illinois EPA) supports USEPA's proposed action and urges USEPA action on rules granting credit for voluntary NO_X emission reductions (''Subpart X''). The Illinois Environmental Regulatory Group (IERG) commented that USEPA may not reach a conclusion on the overall adequacy of Illinois' NO_X regulations unless and until USEPA has completed rulemaking on all of Illinois' NO_X regulations including Subpart X. LTV Steel believes that it should receive a greater number of allowances to reflect a controlled emission rate more consistent with that of other sources, and requests confirmation that emissions monitoring need not begin until May 31, 2003. USEPA responds to Illinois EPA and IERG that we will conduct rulemaking on Subpart X in the near future but we do not agree with IERG that such rulemaking is a prerequisite to judging whether Illinois has an adequate SIP. USEPA responds to LTV Steel that the proposed number of allowances appropriately reflects 60 percent control of that unit. USEPA concurs with a delay for emission monitoring for sources not seeking early reduction credits, but states that the acceptable date is May 1, 2003, not May 31, 2003.

EFFECTIVE DATE: This action will be effective on December 10, 2001.

ADDRESSES: Copies of Illinois' submittals and other information are available for inspection during normal business hours at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, (*summerhays.john@epa.gov*).

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. What did USEPA propose?
II. What are USEPA's responses to comments?
1. Illinois EPA
2. IERG
3. LTV Steel
III. What is USEPA's final action?
IV. Administrative requirements.

I. What Did USEPA Propose?

Illinois' submittals relating to control of nitrogen oxides (NO_X) emissions include four principal sets of rules, all of which are in Title 35 of the Illinois Administrative Code, Part 217: 1) Subpart W, regulating electric generating units, submitted February 23, 2001, 2) Subpart T, regulating cement kilns, submitted April 9, 2001, 3) Subpart U, regulating other large boilers and turbines, submitted May 1, 2001, and 4) Subpart X, providing credit for voluntary NO_X emission reductions, also submitted May 1, 2001. These submittals also include a variety of definitional rules, codified in Part 211. Separately, on June 18, 2001, Illinois submitted a budget demonstration, demonstrating that the regulations in Subparts T, U, and W of Part 217 are sufficient to achieve the levels of NO_X emissions that USEPA budgeted for Illinois. On June 27, 2001, Illinois further submitted evidence of signed legislation amending the compliance date of these rules to set a fixed compliance date of May 31, 2004.

USEPA published proposed rulemaking on Subpart W on August 31, 2000, at 65 FR 52467. Final rulemaking on Subpart W is published elsewhere in today's **Federal Register**.

On June 28, 2001, at 66 FR 34382, USEPA published action proposing to approve most of the rest of Illinois' NO_X emission control program. Specifically, in that action, USEPA proposed to approve Illinois' rules for cement kilns and for industrial boilers and turbines, proposed to approve Illinois' budget demonstration, and proposed to conclude that Illinois has satisfied the requirements established by USEPA in its rulemaking known as the NO_X SIP Call. USEPA conducted expedited rulemaking on these rules due to their similarity to USEPA's rule recommendations. USEPA proposed to exclude Subpart X from this expedited rulemaking but stated its intention to propose action on Subpart X in the near future.

Illinois' budget demonstration submittal also included clarifications of selected elements of Illinois' rules. Most notably, Illinois clarified two terms used in both its electricity generating unit rules and its industrial boiler and turbine rules for limiting emissions from sources seeking low emitter status. As described in the notice of proposed rulemaking, Illinois clarified that ''potential NO_X mass emissions'' may be defined as the emissions determined either by emissions monitoring according to Part 75 or by multiplying hours of operation times maximum potential hourly emissions. Illinois further clarified that a source that emits more than the allowable number of tons (25 tons or less per ozone season) shall be considered to have exceeded its permissible number of hours of operation and shall lose its low emitter status. USEPA concurred with these interpretations.

II. What Are USEPA's Responses to Comments?

USEPA received three sets of comments, sent by the Illinois Environmental Protection Agency (Illinois EPA) on July 24, 2001, sent by the Illinois Environmental Regulatory Group (IERG) dated July 26, 2001, and sent by LTV Steel Company (''LTV Steel'') also dated July 26, 2001. The following describes these comments and provides USEPA's response.

1. Illinois EPA

Comment: Illinois EPA supports USEPA's proposed rulemaking. Illinois EPA urges action on Subpart X of its NO_X regulations, which provide credit under specified criteria for sources that voluntarily reduce NO_X emissions. Illinois EPA acknowledges USEPA's rationale for using ''streamlined rulemaking on the Illinois rules needed to satisfy USEPA's NO_X SIP Call'' (i.e. rules restricting NO_X emissions from electricity generating units, large industrial boilers and turbines, and cement kilns). At the same time, Illinois EPA comments favorably on USEPA statements that ''Subpart X 'provides for an innovative approach to obtaining voluntary reductions of NO_X emissions'" and that USEPA will work with Illinois EPA on Subpart X ''to arrive at a program that is 'approvable and beneficial to the environment.' ''

Response: USEPA acknowledges Illinois EPA's support for the proposed rulemaking. USEPA concurs that Subpart X is an important set of rules and restates its intention to propose rulemaking on Subpart X in the near future.

2. IERG

Comment: IERG in general ''concurs with the analysis and decisions'' in USEPA's proposed rulemaking. However, IERG comments at length that USEPA ''cannot grant overall approval to the State's submittal unless and until it takes final action approving Subpart X.''

IERG first notes that the state law authorizing NO_X emission regulations dictates that the state's rules shall include provisions for ''voluntary reductions of NO_X emissions * * * to provide additional allowances'' for use by trading program participants. IERG states that if this ''legislative mandate * * * is left unfulfilled, the [Illinois EPA] will be precluded, by Illinois law, from administering the NO_X trading program rules.'' In IERG's view, USEPA recognized this interconnection between state regulations and authorizing state legislation when it insisted that an unacceptable compliance deadline included in the rules pursuant to legislative mandate could not be remedied without amending the legislation. Thus, IERG believes that state legislation makes Subpart X an ''integral part of Illinois' NO_X SIP Call submittal.''

IERG then comments that ''absent Subpart X, or a variant thereof, the State does not have the necessary legal authority to implement the plan.'' Legal authority to adopt and implement a plan is one of the criteria under 40 CFR 51 Appendix V for a state submittal to be complete. Therefore, IERG concludes that ''USEPA's overall approval of Illinois' ozone transport SIP Call submittal, and * * * the legal authority for Illinois to proceed with the implementation of the NO_X trading program regulations, can come to fruition only after Subpart X is approved.'' IERG also notes that while Subpart X is an integral element of Illinois' NO_X SIP Call submittal, ''Subpart X is not an element of Illinois' Chicago area attainment demonstration.''

Response: USEPA agrees in part and disagrees in part with IERG's comments. USEPA agrees that it has not completed rulemaking on the NO_X rules that Illinois has submitted, and USEPA agrees that such rulemaking will not be complete until USEPA conducts rulemakings on Subpart X. USEPA disagrees, however, as to whether rulemaking on Subpart X is a prerequisite for determining whether Illinois has satisfied the NO_X SIP Call.

The Illinois legislation quoted by IERG instructs the applicable state governmental bodies to propose and adopt regulations on NO_X emissions pursuant to USEPA's NO_X SIP Call. The legislation gives more detailed instructions on some points, including instructions to adopt provisions for voluntary reductions of NO_X emissions for allowance generation purposes. The state included such provisions in Subpart X.

USEPA believes that Illinois has fulfilled its obligations under the state legislation that provided for the NO_X regulations. However, USEPA does not share IERG's view that the state legislation dictates USEPA's approach to this rulemaking. Illinois' Environmental Protection Act provides for a variety of regulations, including provisions for water pollution and solid waste regulations and including a range of air pollution regulations such as new source permitting and the Illinois volatile organic compound trading program. Clearly USEPA's action on Illinois' NO_X regulations is not contingent on action on the range of other regulations pursuant to this legislation. All of the new regulations for statewide NO_X emission control are authorized in a single section of the Environmental Protection Act (section 9.9), but this fact does not itself mandate that USEPA conduct rulemaking jointly on all elements provided for in this section.

In judging whether it can conduct rulemaking separately on the different subparts of Illinois' NO_X rules, USEPA instead must focus more on the interrelationship of the actual provisions of these subparts. Subpart T specifies control requirements for cement kilns, which for most sources does not involve tradable allowances. Subpart U, addressing industrial boilers and turbines, identifies the regulated sources, specifies how many allowances will be issued to these sources, and requires these sources to hold allowances at least equivalent to their emissions. Subpart W, addressing electricity generating units, again defines the regulated sources, specifies how many allowances will be issued to these sources, and requires adequate allowance holdings. None of these obligations under any of these subparts are altered by any of the provisions of Subpart X.

Subpart X in essence specifies criteria and procedures by which emission units not subject to Subparts T, U, or W that reduce NO_X emissions may be issued allowances. Issuance of such allowances does not alter the compliance obligations of sources under Subparts T, U, or W. Even if a source regulated under Subparts U or W or possibly T may ultimately take possession of allowances potentially issued under Subpart X, such possession only alters the source's method of compliance and does not alter the basic compliance obligation, in particular the obligation to hold adequate allowances. This rationale is similar to the rationale by which USEPA judges Subparts U and W to be independent: although Subpart U can affect the number of allowances available for purchase by Subpart W sources, the provisions of Subpart U have no effect on the compliance obligations of Subpart W sources. Therefore, USEPA could choose to conduct separate rulemakings on Subpart U and Subpart W. Thus, all four subparts of Part 217 are independent from each other, and for example USEPA may choose to conduct rulemaking on Subpart X separately from its rulemaking on other subparts of Part 217.

From USEPA's perspective, Subpart X is essentially no more or less independent from Subparts U and W than it is from the NO_X control regulations in other Eastern states. While Illinois' focus presumably was on providing an alternative set of allowances for Illinois sources, these allowances would also be available for use by sources in other states subject to the NO_X SIP Call. Thus, rulemaking on Subpart X is no more a prerequisite to approving and implementing Subparts U and W than it is to approving and implementing any other state's NO_X control regulations.

The remaining element of IERG's comment questions whether USEPA may reach a conclusion on Illinois satisfying the requirements of the NO_X SIP Call before completing rulemaking on the entire submittal, in particular before completing rulemaking on Subpart X. USEPA continues to believe that it can judge now whether Illinois has satisfied the existing NO_X SIP Call requirements. Through the rules of Subparts T, U, and W, Illinois has limited emissions from cement kilns, industrial boilers and turbines, and electricity generating units, respectively. Illinois submitted a budget demonstration showing that these three subparts of the Part 217 rules are adequate to assure that NO_X emissions in Illinois remain within levels currently budgeted for the State under the NO_X SIP Call. USEPA proposed to approve this demonstration.

The central requirement of the NO_X SIP Call is for each affected state to assure that NO_X emissions do not exceed the budgeted levels. Illinois' budget demonstration shows that the requirements of Subparts T, U, and W assure achievement of these budgeted

NO_X emission levels in Illinois. That is, even before completing rulemaking on Subpart X, USEPA's rulemaking on Subparts T, U, and W suffice to satisfy fully the existing requirements of the NO_X SIP Call.

As a point of clarification, the existing requirements of the NO_X SIP Call are less stringent than USEPA expects these requirements to become. The difference principally reflects a court remand on the portion of the NO_X SIP Call pertaining to control of stationary internal combustion engines. USEPA labels the existing requirements as Phase I of the NO_X SIP Call, which USEPA expects to amend with Phase II budgets reflecting presumed control of internal combustion engines. USEPA is only evaluating the Illinois regulations against the existing, Phase I requirements; USEPA will obviously evaluate Illinois' regulations with respect to Phase II requirements only after USEPA establishes those requirements.

USEPA's approach for judging satisfaction of existing NO_X SIP Call requirements is the same approach it is using to judge the contribution of these rules toward attaining the ozone standard. Subparts T, U, and W each achieve a quantifiable reduction in NO_X emissions. For purposes of the NO_X SIP Call, USEPA must judge whether the collective reductions suffice to assure that Illinois' NO_X emissions budget is achieved. For purposes of the attainment demonstration, USEPA must judge whether the collective reductions suffice to assure attainment. The intention of Subpart X is neither to increase nor to decrease NO_X emissions in Illinois. Therefore, for both the NO_X SIP Call and the attainment demonstration, USEPA may judge whether the applicable requirements are satisfied without needing first to evaluate Subpart X.

3. LTV Steel

Comment: LTV Steel agrees in general with amending Illinois' NO_X emissions budget to add LTV Steel's Boiler 4B to the list of sources subject to allowance holding requirements. However, LTV Steel believes that a larger quantity of emissions should be budgeted for this boiler. Since Illinois is issuing allowances to each source according to its budgeted emissions, LTV Steel's recommendation is expressed in terms of the number of allowances to be issued to LTV Steel for this boiler.

LTV Steel provides data showing that the proposed budgeted emissions for Boiler 4B ''is equivalent to an emission rate of less than 0.146 lb/mmBTU''. LTV Steel objects that the budgeted emission rate for Boiler 4B ''should not be more stringent than the [0.15 lb/mmBTU emission rate budgeted for electricity generating units]''.

LTV Steel quotes from USEPA's NO_X SIP Call rulemaking of October 27, 1998, as follows: ''EPA determined the aggregate emission levels for large non-electric generating units in each State budget based upon a 60 percent reduction * * *. The 60 percent reduction results in an average emission rate across the region of 0.17 lbs/mmBTU for large non-electric generating units. Therefore, initial unadjusted allocations to existing large non-electric generating units would be based on actual heat input data (in mmBTU) for the units multiplied by an emission rate of 0.17 lb/mmBTU.'' LTV Steel also provides a similar quote from USEPA's rulemaking of January 18, 2000. LTV Steel concludes, based on the 1995 heat input for its Boiler 4B, that the unit should receive allowances for 70 tons per ozone season rather than 60.

Response: USEPA and LTV Steel agree on most points: we agree that Boiler 4B should be subject to requirements as a large boiler, we agree that controlled emissions for this boiler should be calculated consistently with other units, and we agree that 1995 conditions (projected to 2007) should be the basis for the calculations. However, we do not agree on whether the emissions budget for LTV Steel's boiler should be calculated at 0.17 lb/mmBTU or at 60 percent control.

LTV Steel's Boiler 4B burns a combination of natural gas and coke oven gas. Using emissions data collected at the facility, Illinois EPA and USEPA estimate that 60 percent control of this boiler would yield an emission factor slightly below 0.15 lb/mmBTU.

USEPA is addressing emissions budgeted for this unit and not the allocation for the unit; Illinois then has latitude in how it distributes allowance allocations. This distinction appears moot in Illinois because the state's rules provide allowances according to each source's portion of the budget (minus a new source set-aside), but the distinction is key to understanding the statement in USEPA's rulemaking. The quoted statement clearly says that emission budgets for large non-electricity generating units reflect 60 percent control. As quoted by LTV Steel, the rulemaking notice explains that this control level for industrial boilers and turbines on average reflects an emission factor of 0.17 lbs/mmBTU, so a state could at least approximately achieve the budgeted NO_X emission level by issuing allocations at 0.17 lbs/mmBTU. However, states also have the option to allocate allowances according to the 60 percent control level, which is the option Illinois has chosen. Regardless of how the state chooses to distribute allowances, USEPA must calculate the budget adjustment for LTV Steel's Boiler 4B according to 60 percent control.

Illinois' rules provide an allowance allocation to LTV Steel according to this budget adjustment. Therefore, LTV Steel must have an allocation for Boiler 4B that reflects 60 percent control.

The second rulemaking quoted by LTV Steel is USEPA's rulemaking on petitions under Clean Air Act section 126. Besides the fact that this rulemaking does not apply directly to Illinois, the section 126 context differs from the NO_X SIP Call context in a way that makes the quoted statement irrelevant. In its section 126 action, USEPA was responsible for determining allowance allocations. USEPA chose here to issue allowances according to an average emission level, but this choice in no way requires states to use the same approach in allocating allowances under the NO_X SIP Call. In addition, the quoted statements suggest that had USEPA found 60 percent control to reflect a lower average emission rate, USEPA would have allocated allowances according to that lower rate.

As noted in the proposed rulemaking on Illinois' rules, USEPA has provided detailed budget calculations on its web site, at *ftp://ftp.epa.gov/EmisInventory/NOxSIPCall_Mar2_2000/*. The spreadsheet for Illinois available at this site clearly calculates the emissions budget for industrial boilers and turbines on the basis of 60 percent control. Thus, USEPA is adjusting Illinois' budget to include LTV Steel's Boiler 4B at a 60 percent control level, which under Illinois' rules will result in LTV Steel receiving an allocation for 60 tons of allowances for each ozone season.

Comment: LTV Steel requested confirmation that the deadline for installing and operating continuous emissions monitoring has been delayed to May 31, 2003.

Response: Illinois' rule at section 217.456(c) subjects sources such as LTV Steel to the monitoring requirements of 40 CFR 96 Subpart H. (Electricity generating units are similarly subject to the 40 CFR 96 Subpart H requirements pursuant to section 217.756(c).) As promulgated, 40 CFR 96.70 requires that monitoring begin at least by May 1, 2002, and earlier if the source seeks early reduction credits. However, a decision by the Court of Appeals for the District of Columbia Circuit has delayed the emissions compliance deadline of

the NO_X SIP Call by one year plus one month.

While 40 CFR 96 Subpart H has not been expressly modified, USEPA recognizes that the change in the compliance deadline warrants a delay in the deadline for emissions monitoring for sources not seeking early reduction credits. The purposes of this monitoring are best achieved by starting at the beginning of the defined ozone season rather than one month later. Therefore, USEPA believes that the Court of Appeals decision warrants a one year delay but not a thirteen month delay in the commencement of emissions monitoring for sources not seeking early reduction credits.

In summary, USEPA affirms that installation and operation of continuous emissions monitoring may be delayed until May 1, 2003, for sources that are not seeking early reduction credits.

III. What Action Is USEPA Taking?

USEPA is taking final action approving Subparts T and U of Part 217 of Title 35 of the Illinois Administrative Code, regulating NO_X emissions from cement kilns and industrial boilers and turbines, respectively. This approval reflects selected rule interpretations described in the notice of proposed rulemaking. USEPA is making two minor amendments to the budget as requested by Illinois, adding a boiler owned by LTV Steel and deleting a boiler owned by University of Illinois from the inventory of large boilers and turbines. By separate action today, USEPA is approving Subpart W, regulating NO_X emissions from electricity generating units.

Illinois' budget demonstration shows that these three sets of regulations provide sufficient limitations on NO_X emissions in the state to satisfy the existing requirements of USEPA's NO_X SIP Call. USEPA is approving this budget demonstration. With this approval and the approval of the three relevant sets of regulations, USEPA concludes that Illinois has fully satisfied current (''Phase I'') requirements under the NO_X SIP Call.

USEPA wishes to clarify its views on one aspect of compliance accounting under Illinois' rule. USEPA's administration of a multi-state trading program requires that the states have consistent compliance accounting procedures. USEPA will be using procedures in which compliance is assessed on a unit-by-unit basis. Illinois' rules for industrial boilers and turbines are somewhat unclear on this point: multiple rule paragraphs indicate that compliance is assessed on a unit-by-unit basis, and yet Section 217.456 (d)(1) suggests that the source may be in compliance if the source has adequate allowances on a source-wide basis.

Illinois provided clarification on this point in a letter to USEPA dated September 20, 2001. Illinois specified that its rules must be interpreted to require compliance on a unit-by-unit basis. Consequently, if a source holds a sufficient total number of allowances but misdistributes these allowances such that one or more unit accounts (supplemented by available allowances from the source's overdraft account) hold insufficient allowances, those units will be in violation. Each violating unit will be subject to the 3 to 1 deduction of allowances pursuant to Illinois' section 217.456 (f)(5) and USEPA's 40 CFR 96.54 (d)(1). USEPA concurs with and approves this interpretation of Illinois' rules.

The regulations approved here, along with the regulations governing electricity generating units, are an important part of Illinois' attainment demonstration for the Chicago area. USEPA finds these regulations creditable for this purpose.

USEPA is also approving all the definitions of Part 211 submitted in conjunction with the Subpart T and Subpart U submittals. These part 211 rules provide a variety of definitions of terms used in part 217 that are generally quite similar to USEPA's recommended definitions. These rules also include a definition of the term ''source'' that brings that definition into conformance with state law and USEPA recommendations.

Because USEPA has not approved Subpart X, allowances may not be issued for sources that voluntarily reduce NO_X emissions pursuant to these rules. In addition, provisions in Subpart U implying creditability of emission reductions pursuant to Subpart X are inoperative prior to approval of Subpart X.

In order to fulfill its obligation for rulemaking on the entire Illinois submittal, USEPA must conduct rulemaking on Subpart X. While USEPA is taking no action today on Subpart X, USEPA intends to conduct rulemaking on Subpart X in the near future.

USEPA has reviewed the completeness of Illinois' submittals of February 23, 2001, April 9, 2001, May 1, 2001, and June 18, 2001. USEPA concludes that these submittals are complete and represent a complete response to Phase I of USEPA's NO_X SIP Call. Consequently, USEPA concludes that Illinois has remedied the prior deficiency identified on December 26, 2000 (65 FR 81366), namely Illinois' prior failure to submit a SIP in response to the NO_X SIP Call. USEPA's December 2000 finding started an 18-month clock for the mandatory imposition of sanctions and the obligation for USEPA to promulgate a FIP within 24 months. Today's action terminates both the sanctions clock and USEPA's FIP obligation.

IV. 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, USEPA'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), 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.

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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.