

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-SW-60-AD]

RIN 2120-AA64

#### Airworthiness Directives; Bell Helicopter Textron Model 412 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD) for the Bell Helicopter Textron, Inc. (BHTI) Model 412 high landing gear aft crosstube assembly (crosstube assembly) that would have required determining the number of landings, inspecting for damage, vibro-etching a part number (P/N) and a serial number (S/N), creating a component history card or equivalent record, establishing a retirement life, and replacing each unairworthy crosstube assembly. Since the issuance of the NPRM, the FAA has determined that the NPRM contained incorrect part numbers. Also, the FAA is conducting a more thorough review of the service history to determine whether a yearly inspection of the crosstube assembly is a better corrective action. Accordingly, the proposed rule is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193-0170, telephone (817) 222-5447, fax (817) 222-5783.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 to adopt a new AD for BHTI Model 412 helicopters was published in the **Federal Register** on November 15, 2000 (65 FR 68953). The proposed rule would have contained the following requirements for certain crosstube assemblies:

- Reviewing the aircraft maintenance records to determine the number of landings;
- Inspecting for damage and replacing any unairworthy crosstube assembly;
- Vibro-etching a P/N on the crosstube assembly;
- Vibro-etching a S/N on the crosstube assembly;
- Creating a component history card or equivalent record; and
- Establishing a retirement life of 10,000 landings for crosstube assemblies, P/N 412-050-010-101 and 412-050-011-107 FM, and a retirement life of 20,000 landings for crosstube assemblies, P/N 412-050-045-107.

That action was prompted by reports of failures indicating that a retirement life should be assigned to the crosstube assembly. The proposed actions were intended to detect damage that could lead to a fatigue crack and failure of the crosstube assembly and subsequent loss of control of the helicopter during landing.

Since the issuance of that NPRM, the FAA has received new data from the manufacturer indicating that the NPRM contained incorrect part numbers. The FAA has also gathered more failure data and service history of certain crosstube assemblies.

Upon further consideration and review of this new data, the FAA has determined that the NPRM contained incorrect part numbers. Also, after reviewing the service history, the FAA has determined that assigning a retirement life to the crosstube assembly might not adequately address the unsafe condition. However, the FAA is still reviewing the failure data and service history to determine whether to require yearly inspections of certain crosstube assemblies to more adequately address the unsafe condition. Accordingly, we have decided to withdraw the proposed rule.

Withdrawal of this NPRM constitutes only such action and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Withdrawal

Accordingly, the NPRM, Docket No. 2000-SW-60-AD, published in the **Federal Register** on November 15, 2000 (65 FR 68953), is withdrawn.

Issued in Fort Worth, Texas, on March 22, 2001.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IL204-1; FRL-6960-7]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** Through parallel processing, the EPA is proposing to approve a draft statewide rule to control the emissions of Oxides of Nitrogen (NO<sub>x</sub>) from Electric Generating Units (EGUs) in the State of Illinois. Illinois submitted this rule for parallel processing on October 20, 2000. The rule, when finalized and adopted by the State, will provide NO<sub>x</sub> emission reductions to support attainment of the one-hour ozone standard in the Metro-East/St. Louis ozone nonattainment area. Significant changes in the rule between the version reviewed here and the final adopted version, other than those changes resulting from issues discussed in this proposed rulemaking, will result in a new EPA proposed rulemaking on Illinois' subsequent submittal of the adopted rule. Otherwise the EPA will proceed with final rulemaking when the adopted rule is submitted by the State.

**DATES:** Written comments must be received on or before May 3, 2001.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S.

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and other relevant materials are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please telephone Edward Doty at (312) 886-6057 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Edward Doty, Regulation Development Section, Air Programs Branch (AR-18), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886-6057, E-Mail Address: doty.edward@epa.gov.

**SUPPLEMENTARY INFORMATION:**

Throughout this document, the terms "you" and "me" refer to the reader of this proposed rulemaking and to sources subject to the State rule addressed by this proposed rulemaking, and the terms "we," "us," or "our" refers to the EPA.

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**I. Background**

*A. What Is a State Implementation Plan (SIP)*

Section 110 of the Clean Air Act (Act or CAA) requires states to develop air pollution control regulations and strategies to ensure that state air quality meets the national ambient air quality standards established by the EPA. Each state must submit the regulations and emission control strategies to the EPA for approval and promulgation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its points of origin. The SIPs can be and generally are extensive, containing many state regulations or other enforceable documents and supporting information, such as emission inventories, monitoring documentation, and modeling demonstrations (attainment demonstrations).

*B. What Is the Federal Approval Process for a SIP?*

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and emission control strategies consistent with state and Federal requirements. This process generally includes public notice, public hearings, public comment periods, and formal adoption by state-authorized rulemaking bodies.

Once a state rule, regulation, or emissions control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action (they are generally addressed in a final rulemaking action).

This rule is being parallel processed. Parallel processing means that EPA proposes action on a state rule before it becomes final under state law. Under parallel processing, EPA takes final action on its proposal if the final, adopted state submission is substantially unchanged from the submission on which the proposed rulemaking was based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposed rulemaking or result from needed corrections determined by the State to be necessary through review of issues described in EPA's proposed rulemaking.

All state regulations and supporting information approved by the EPA under section 110 of the Act are incorporated

into the Federally approved SIP.

Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, titled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR, but are "incorporated by reference," which means that EPA has approved a given state regulation (or rule) with a specific effective date.

*C. What Does Federal Approval of a State Regulation Mean to Me?*

Enforcement of a state regulation before and after it is incorporated into a Federally approved SIP is primarily a state responsibility. After the regulation is Federally approved, however, EPA is authorized to take enforcement actions against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the Act.

*D. What Clean Air Act Requirements Apply to or Led to the State's Submittal of the NO<sub>x</sub> Emission Control Rule?*

The Act 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 an one-hour ozone standard of 0.12 parts per million (ppm) or 120 parts per billion (ppb) to protect public health. 44 FR 8202 (February 8, 1979).

Ground-level ozone is generally not directly emitted into the air by sources. Rather, Volatile Organic Compounds (VOC) and NO<sub>x</sub>, both emitted by a wide variety of sources, react in the presence of sunlight to form additional pollutants, including ozone. NO<sub>x</sub> 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 one-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 ozone nonattainment areas, based on the areas' ozone design values (generally the fourth highest daily peak one-hour ozone concentrations over a three year period at the areas' worst-case ozone monitoring sites) as marginal, moderate, serious, severe, or extreme. Marginal areas were experiencing the least significant ozone nonattainment problems (lowest ozone design values

and generally fewer ozone standard exceedences per year), while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and the dates by which attainment of the ozone standard are to be achieved vary with an area's classification. Marginal areas were subject to the fewest mandated emission control requirements and had the earliest attainment date (deadline), November 15, 1993. Moderate areas were subject to more stringent planning and emission 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 ozone standard. Serious nonattainment areas fall in between moderate nonattainment areas and severe nonattainment areas in terms of planning requirements and mandated emission control requirements.

The Metro-East/St. Louis area was classified as moderate nonattainment for ozone, giving it an attainment date of November 15, 1996. This area is defined to contain Madison, Monroe, and St. Clair Counties in Illinois (the Metro-East portion of the nonattainment area), and Franklin, Jefferson, St. Charles, and St. Louis Counties and St. Louis City in Missouri. 40 CFR 81.314 and 81.326.

The Act requires moderate and above ozone nonattainment areas to be addressed in SIPs through ozone attainment demonstrations, including adopted emission control regulations sufficient to achieve the ozone standard by the applicable ozone attainment date. The requirements of the Act for ozone attainment demonstrations for moderate and above ozone nonattainment 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 date. Section 172(c)(1) of the Act requires the implementation of reasonably available control measures (including Reasonably Available Control Technology [RACT] for stationary industrial sources), and requires the SIP to provide for sufficient annual reductions in emissions of VOC and NO<sub>x</sub> as necessary to attain the ozone standard by the applicable attainment date. 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 standard in multi-state moderate ozone nonattainment areas (the Metro-East/St. Louis ozone nonattainment area is such an area). The attainment demonstrations based on photochemical grid modeling address the emission impacts of both VOC and NO<sub>x</sub>.

The NO<sub>x</sub> emission control regulations (collectively referred to as the NO<sub>x</sub> rule) addressed in this proposed rulemaking are intended to meet the requirements for the ozone attainment demonstration for the Metro-East/St. Louis ozone nonattainment area.

#### *E. What Analyses and EPA Rulemaking Actions Support the Need for the NO<sub>x</sub> Emission Control Rules?*

On October 27, 1998, the EPA promulgated a NO<sub>x</sub> SIP call (requiring the development of NO<sub>x</sub> SIPs and rules) for a number of states, including the State of Illinois. The NO<sub>x</sub> SIP call requires the subject States to develop NO<sub>x</sub> emission control regulations on a regional basis (generally statewide) of sufficient nature to provide for statewide NO<sub>x</sub> emissions at or below prescribed state-wide NO<sub>x</sub> emission budgets in 2007. The regional NO<sub>x</sub> emission reductions will address ozone formation and transport in the area of the Country primarily east of the Mississippi River, but will also affect the Metro-East/St. Louis area as a whole. Although the NO<sub>x</sub> SIP call will impact the Metro-East/St. Louis area, it should be noted that the State of Illinois has not submitted the NO<sub>x</sub> rule reviewed here for the purpose of meeting the requirements of the NO<sub>x</sub> SIP call. As noted by the Illinois Environmental Protection Agency (IEPA), the IEPA has submitted the NO<sub>x</sub> rule reviewed here strictly for the purpose of attaining the one-hour ozone standard in the Metro-East/St. Louis area.

Illinois is adopting NO<sub>x</sub> rules to address the NO<sub>x</sub> SIP call, and has submitted adopted and proposed (draft) rules for this purpose. On June 29, 2000, the IEPA submitted a draft NO<sub>x</sub> rule for EGUs to comply with the NO<sub>x</sub> SIP call. The EPA proposed action on this draft rule on August 31, 2000. 65 FR 52967. Illinois adopted this rule and submitted it to the EPA on December 27, 2000. This NO<sub>x</sub> SIP call-based rule is currently undergoing separate review. The possible actions reflected in today's proposed rulemaking in no way relate to the State's EGU NO<sub>x</sub> rule under the NO<sub>x</sub> SIP call. The NO<sub>x</sub> rule reviewed here is another, separate rule affecting EGUs, and will be supplemented by the NO<sub>x</sub> SIP call-based rules when they are adopted by the State.

The State of Illinois has the primary responsibility under the Act for ensuring that all portions of Illinois meet the ozone standard, and is required to submit air quality attainment and maintenance plans that specify emission limitations, control measures, and other measures necessary for attainment, maintenance, and enforcement of the NAAQS within the State. The attainment plan 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 as part of the SIP.

The States of Illinois and Missouri have worked cooperatively to provide the EPA with ozone attainment demonstrations for this area. Analyses conducted to support the attainment demonstrations for this area indicate that regional reductions in upwind NO<sub>x</sub> emissions are needed to reduce the transport of ozone into this area and to support the adopted ozone attainment demonstrations. These regional reductions in NO<sub>x</sub> emissions include control of NO<sub>x</sub> emissions from EGUs in Illinois and Missouri along with control of NO<sub>x</sub> emissions in other upwind States. The ozone attainment demonstration for Illinois (undergoing separate review by the EPA) is based, in part, on limiting NO<sub>x</sub> emissions from EGUs throughout Illinois to an emissions rate of no higher than 0.25 pounds NO<sub>x</sub> per million British thermal units of heat input (0.25 pounds NO<sub>x</sub>/MMBtu of heat input). The Missouri EGU NO<sub>x</sub> emission rates would be limited to 0.25 pounds NO<sub>x</sub>/MMBtu of heat input in the eastern one-third of the State and to 0.35 pounds NO<sub>x</sub>/MMBtu of heat input in the western two-thirds of the State. For other impacting upwind States, the Illinois and Missouri ozone attainment demonstration assumes that EGU NO<sub>x</sub> emissions would be limited to 0.25 pounds NO<sub>x</sub>/MMBtu of heat input.

At the time the original attainment demonstrations were prepared for the Metro-East/St. Louis ozone nonattainment area (the original attainment demonstrations were reviewed by the EPA in proposed rulemaking on April 17, 2000, 65 FR 20404), the IEPA and the Missouri Department of Natural Resources (MDNR) assumed that the upwind States would be required to achieve the 0.25 pounds NO<sub>x</sub>/MMBtu emission rate limits for EGUs (or even tighter NO<sub>x</sub> emission limits) by May 1, 2003 based on the October 1998 NO<sub>x</sub> SIP call. A subsequent, August 30, 2000, Court decision (*Michigan v. EPA*, No. 98–1497, District of Columbia Circuit Court

of Appeals) supported the NO<sub>x</sub> SIP call, but delayed its compliance date to May 31, 2004. The IEPA and MDNR have revised the ozone attainment demonstrations to reflect the delay in the upwind emission reductions and to demonstrate attainment of the one-hour standard by May 31, 2004 (the revised attainment demonstrations are undergoing separate review and will be addressed in a separate proposed rulemaking). The revised ozone attainment demonstrations continue to support the EGU 0.25 pounds NO<sub>x</sub>/MMBtu emission limit for Illinois and the EGU 0.25/0.35 pounds NO<sub>x</sub>/MMBtu emission limits for Missouri as being adequate to achieve attainment of the one-hour ozone standard in the Metro-East/St. Louis ozone nonattainment area.

In the April 17, 2000 proposed rulemaking on the Illinois and Missouri ozone attainment demonstrations, the EPA proposed to approve the attainment demonstrations, but proposed to disapprove the attainment demonstrations in the alternative if the States failed to submit a proposed NO<sub>x</sub> emission control rule for EGUs by June 2000 and final, adopted regional NO<sub>x</sub> emission control rules for EGUs by December 2000 to support the ozone attainment demonstrations. The State of Missouri submitted its state-wide EGU NO<sub>x</sub> regulations on June 29, 2000. The EPA proposed to approve these regulations on August 24, 2000. 65 FR 51564. The EPA gave final approval to these regulations on December 28, 2000. 65 FR 82285.

On June 29, 2000, the IEPA submitted a draft statewide NO<sub>x</sub> rule for EGUs to comply with the NO<sub>x</sub> SIP call. As noted in EPA's August 31, 2000 proposed rulemaking, the draft rule establishes a source compliance date contingent on the final date of the EPA approval of NO<sub>x</sub> SIP call-based rule for contiguous States (contiguous to Illinois) and for other States in Region 5 of the EPA or the promulgation of Federal Implementation Plans (FIPs) for these States by the EPA. Based on its August 31, 2000 proposed rulemaking, the EPA has determined that the contingent compliance date of Illinois' draft EGU NO<sub>x</sub> SIP call-based rule could jeopardize the attainment of the one-hour standard in the Metro-East/St. Louis area by a fixed date. Recognizing this concern of the EPA, the IEPA has developed a draft EGU NO<sub>x</sub> rule with a fixed compliance date and emission rate limit that matches the statewide NO<sub>x</sub> emission control reflected in the Metro-East/St. Louis ozone attainment demonstration. This draft EGU NO<sub>x</sub> rule is the subject of this proposed

rulemaking. As noted above, this draft NO<sub>x</sub> rule does not displace the EGU NO<sub>x</sub> rule developed by the State to comply with the NO<sub>x</sub> SIP call, but would be supplemented by the EGU NO<sub>x</sub> SIP call-based rule at a later time. The proposed rule reviewed here would assure earlier emission reductions than those resulting from the NO<sub>x</sub> SIP call-based rules.

## II. Summary of the State Submittal

### A. When Was the NO<sub>x</sub> Emission Control Rule Submitted to the EPA?

The IEPA submitted the draft 0.25 EGU NO<sub>x</sub> rule to the EPA on October 20, 2000.

### B. Has the Rule Been Adopted by the State?

On October 16, 2000, the IEPA submitted the 0.25 EGU NO<sub>x</sub> rule to the Illinois Pollution Control Board (IPCB) for the purposes of adoption by the State. To date, the IPCB has not adopted this rule. The IPCB held public hearings on this rule on November 28, 2000 and December 14, 2000. Adoption of the rule by the State is expected to occur in April 2001.

This rule is draft and is subject to future revision through the public comment and adoption processes of the State. The IEPA has requested the EPA to parallel process the rule. The IEPA expects to provide the final rule to the EPA when the State rulemaking process is completed in the Spring of 2001.

### C. What Are the Basic Components of the State's Rule?

The rule reviewed here is proposed to constitute subpart V (Electric Power Generation) of part 217 of Illinois' air pollution control rules. It should be noted that, on August 31, 2000 (65 FR 52967), the EPA proposed rulemaking for NO<sub>x</sub> controls under subpart W of part 217 of Illinois' air pollution control rules. The subpart W rule was developed by the State to comply with EPA's NO<sub>x</sub> SIP call, and will also affect sources affected by subpart V. As noted above, the subpart V rule is designed to achieve emission controls consistent with Illinois' and Missouri's ozone attainment demonstration for the Metro-East/St. Louis ozone nonattainment area and will be implemented by date certain. The subpart W rule will be implemented in addition to the subpart V rule, further reducing the NO<sub>x</sub> emissions from EGUs, but may not be implemented by date certain and in time to meet the ozone standard attainment date supported by the Illinois and Missouri ozone attainment demonstrations. It should be further

noted that this proposed rulemaking on the subpart V NO<sub>x</sub> control rule must be viewed as being independent of the NO<sub>x</sub> SIP call-related rulemakings. In no way is the subpart V rule intended by the State to comply with the requirements of EPA's NO<sub>x</sub> SIP call.

The following summarizes various aspects of the Subpart V rule.

### 1. What Geographic Region and Sources Will Be Affected by the Rule?

Section 217.700 of the rule states that the subpart V rule would control the emissions of NO<sub>x</sub> from EGUs throughout the State of Illinois for the period of May 1 through September 30 each year beginning in 2003.

Section 217.704 of the rule defines the fossil fuel-fired stationary boilers, combustion turbines, and combined cycle systems to be considered as EGUs and subject to the subpart V rule. The subject units are defined to be one of the following:

(1) Any unit serving a generator that has a nameplate capacity greater than 25 megawatts of electrical output (25 MWe) and produces electricity for sale, excluding units listed in appendix D of part 217 of the State's air pollution control rule; or

(2) Any unit with a maximum design heat input that is greater than 250 MMBtu per hour that commences operation on or after January 1, 1999, serving at any time a generator that has a nameplate capacity of 25 MWe or less and has the potential to use more than 50 percent of the potential electrical output capacity of the unit. Fifty (50) percent of a unit's potential electrical output capacity shall be determined by multiplying the unit's maximum design heat input by 0.0488 MWe per MMBtu.

### 2. What Are the Allowable NO<sub>x</sub> Emission Rates or Levels for Affected Sources?

Section 217.706 of the subpart V rule specifies the NO<sub>x</sub> emission limitations for the affected sources. Following the compliance deadline (see item 4 below), the NO<sub>x</sub> emissions from affected sources are limited to 0.25 pounds of NO<sub>x</sub> per MMBtu of actual heat input during each control period (May 1 through September 30), based on a control period average for each unit. Any EGU subject to more stringent NO<sub>x</sub> emission limitations pursuant to any State or Federal statute, including the State's Clean Air Act, and the Federal Clean Air Act must comply with both the requirements of subpart V and the more stringent limitations.

### 3. What Are the Compliance Options for the Affected Sources?

The affected sources must meet the emission limitation requirement of this rule through compliance with the emission limit at the sources themselves or, for certain specified sources, may meet the emission limitation requirement through inter-source averaging between various EGUs. Direct compliance (compliance through the use of emission controls at the EGUs themselves and not through inter-EGU emissions averaging) with the emission limitation would probably entail the use of combustion process modifications, fuel substitutions, or catalytic or non-catalytic reduction technology. (The rule reviewed here does not specify the control techniques to be used, but these are generally the NO<sub>x</sub> control techniques employed for EGUs to achieve this emission rate limit.) Direct compliance does include averaging of emission rates at the sources over each control period (May 1 through September 30).

Section 217.708 of the rule specifies the approach and requirements for emissions averaging between specific EGUs within the State of Illinois. Participation in the inter-source (inter-EGU) averaging approach is at the discretion of the source owners or operators themselves. For purposes of compliance with the NO<sub>x</sub> SIP call, the State of Illinois is establishing a NO<sub>x</sub> emissions trading program. Sources eligible to participate in this program have been specified in appendix F of part 217 of the Illinois air pollution control rule. These sources may participate in inter-source emissions averaging under the subpart V rule. The owner or operator of Soyland Power (an EGU not listed in appendix F) may also choose to comply with subpart V through the inter-source averaging program for any unit at Soyland Power that commenced commercial operation on or before January 1, 2000.

Section 217.708 of subpart V specifies the equation governing the averaging of emissions for units participating in the inter-source averaging program. Compliance through this emissions averaging program must be demonstrated for each EGU by November 30 following each control period beginning in 2003. Averaging of emissions under this rule section must be authorized through federally enforceable permit conditions for each EGU. If inter-source averaging is used to demonstrate compliance with the Subpart V requirements, failure to demonstrate such compliance collectively by all EGUs involved in the

inter-source averaging shall result in the subject EGUs each being judged using the 0.25 pounds NO<sub>x</sub> per MMBtu of heat input emission limit averaged for each EGU over the emission control period. Only the non-complying EGUs, individually based on this NO<sub>x</sub> emission limit, will be the subjects of subsequent enforcement and other EGUs involved in the inter-source averaging shall not be held as responsible for the compliance failure based on the inter-source averaging.

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

All affected sources are subject to the requirements of subpart V on and after May 1, 2003.

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

Section 217.710 of the rule specifies the monitoring requirements for affected sources. The owner or operator of an affected source must install, calibrate, maintain, and operate continuous emission monitoring systems for NO<sub>x</sub> that meet the requirements of 40 CFR part 75, subpart B. The owner or operator of a gas-fired peaking unit or an oil-fired peaking unit, as defined in 40 CFR 72.2 may determine NO<sub>x</sub> emissions in accordance with the emission estimation protocol of 40 CFR part 75, subpart E.

Section 217.712 of the rule specifies the reporting and recordkeeping requirements for affected sources. The owners or operators of affected sources must comply with the recordkeeping and reporting requirements of 40 CFR part 75 applicable to NO<sub>x</sub> emissions during the control period.

For sources (owners or operators of subject EGUs) directly complying with the requirements of subpart V (not complying through inter-source averaging), a report must be submitted to the IEPA by November 30 of each year beginning in 2003 demonstrating that the NO<sub>x</sub> emissions from the EGUs have not exceeded the NO<sub>x</sub> emission limit (0.25 pounds NO<sub>x</sub> per MMBtu of heat input) during the control period based on control period emission rate averages.

For owners or operators of sources choosing to comply through inter-source averaging, by November 30 of each year beginning in 2003, the owners or operators must submit to the IEPA a report that demonstrates or specifies:

(1) For all EGUs participating in the averaging program, the averaged control period NO<sub>x</sub> emission rate pursuant to

the emission rate averaging equation in section 217.708(b) of subpart V;

(2) The control period average NO<sub>x</sub> emission rate of each EGU participating in the averaging program; and

(3) The information required to determine the average NO<sub>x</sub> emission rate pursuant to the emission rate averaging equation.

All records and supporting data needed to demonstrate compliance must be kept and maintained by the owners or operators of the subject EGUs for five years. These records and supporting data must be made available for inspection or copying upon the request of the IEPA or the EPA. Requested data and records must also be supplied to the IEPA within 30 days of their written request by the IEPA.

### D. What Public Review Opportunities Have Been or Will Be Provided by the State for This Rule?

The IPCB scheduled public hearings on this rule to take place in December 2000 and January 2001. A public hearing on this rule also occurred on February 27, 2001. To date, the EPA has not seen the outcome of these public hearings or other written public comments, but expects such information when the State submits the final, adopted rule in the Spring of 2001.

### III. EPA Review of the Draft Rule

#### A. Does the Rule Adequately Support the Attainment of the Ozone Standard in the Metro-East/St. Louis Ozone Nonattainment Area?

This rule is a critical element in the State's plan to attain the ozone standard in the Metro-East/St. Louis nonattainment area. As part of the modeled emissions control strategy considered in ozone modeling for this area, Missouri and Illinois included NO<sub>x</sub> emission reductions for certain sources throughout the two States. Full approval of the ozone attainment demonstration SIPs (Illinois and Missouri) (currently awaiting supplemental proposed and final rulemaking by the EPA) for this area are dependent upon the adoption of regional NO<sub>x</sub> emissions control rule sufficient to achieve attainment of the ozone standard. EPA's first proposed rulemaking for the ozone attainment demonstrations was published on April 17, 2000. 65 FR 20404. That proposal includes a detailed discussion of the role of regional NO<sub>x</sub> emission reductions in attainment of the ozone standard in the Metro-East/St. Louis area. The NO<sub>x</sub> emission limit established in the NO<sub>x</sub> rule for Illinois reviewed here is consistent with the

attainment year EGU NO<sub>x</sub> emission rate modeled in the ozone attainment demonstrations.

*B. What Other Criteria Were Considered To Judge the Approvability of the Rule and Does the Rule Meet These Criteria?*

Besides setting emission limits low enough to support the ozone demonstration attainment, the rule must also meet other criteria before it can be approved as part of the SIP. To be approved by the EPA, the rule must also be permanent and enforceable. To be enforceable, the rule must: (1) Have a defined compliance deadline (this deadline must also require the implementation of the rule to occur in sufficient time to provide for the attainment of the standard by the attainment deadline); (2) have adequate record keeping and reporting requirements sufficient to allow a determination of compliance; (3) specify appropriate compliance methods; and (4) provide for or not circumvent EPA enforcement of the rule.

EPA's review of the State rule addressed in this proposed rule shows that it meets these criteria. The compliance requirements (albeit not the specific emission control systems) are specified in the rule. The compliance date is specified and is compatible with the standard attainment date specified in the States ozone attainment demonstration. The recordkeeping and reporting requirements are specified and are acceptable. The EPA is not prevented from enforcing the rule. In fact, the emission trading portion of the rule specifically requires federally enforceable permits for the sources involved in the trading. Finally, the rule is permanent. Although the rule will eventually be supplemented by the requirements of the State's NO<sub>x</sub> SIP under EPA's NO<sub>x</sub> SIP call, the 0.25 pounds NO<sub>x</sub>/MMBtu rule will remain in place, assuring the permanence of the rule.

*C. Is the Rule Approvable?*

All factors considered above, it is concluded that this rule is approvable.

#### IV. Proposed Action

*A. What Action Is EPA Proposing Today?*

The EPA is proposing to approve a draft statewide rule to control the emissions of NO<sub>x</sub> from EGUs in support of the ozone attainment demonstration for the Metro-East/St. Louis ozone

nonattainment area. Because this proposed approval is based on the review of a draft rule, the EPA is proposing this approval through parallel processing, an action requested by the State of Illinois.

*B. What Happens if Illinois Significantly Changes the Rule During the Adoption Process?*

Significant changes in the rule between the version reviewed here and the final adopted version, other than those changes resulting from issues discussed in this proposed rulemaking, may result in a new EPA proposed rulemaking on Illinois' subsequent submittal of the adopted rule. If no substantive changes, other than those anticipated or caused by this proposed rulemaking, are found in the final adopted rule, the EPA will proceed with final rulemaking on the rule.

#### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Pub. L. 104-4). This proposed 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, 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 proposes to approve 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 proposed 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 proposed 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 proposed 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.*).

#### List of Subjects in 40 CFR Part 52

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

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

Dated: March 23, 2001.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

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