appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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 action 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).

C. Petitions for Judicial Review

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 9, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 to control NO_X emissions from stationary combustion turbine electric generating units in Delaware 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, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: October 28, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 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 I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by adding entries for Regulation 1148—Control of Stationary Combustion Turbine Electric Generating Unit Emissions at the end of the table to read as follows:

52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Regulation No. 1148	Control of Stationary Combustion Turbine Electric Generating Unit Emissions			
Section 1.0	Purpose	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 2.0	Applicability	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 3.0	Definitions	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 4.0	NO_X Emissions Limitations.	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 5.0	Monitoring and Reporting.	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 6.0	Recordkeeping	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 7.0	Penalties	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.

* * * * *

[FR Doc. E8–26398 Filed 11–7–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–IL–0003; FRL–8730–4]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; CILCO (AmerenEnergy) Edwards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is responding to comments and taking final action on a July 29, 2003, site-specific sulfur dioxide (SO_2) State Implementation Plan revision request for the Central Illinois Light Company E.D. Edwards Generating Station, now known as AmerenEnergy Resources Generating Company, Edwards Power Plant, in Peoria County, Illinois. This request amends the facility's emission limits to allow a higher SO_2 emission limit for one of its boilers. To offset this increase, the revised rule includes a group limit for the facility's three boilers which is

lower than the individual boiler emission limits. The revised rule retains the facility's existing cap on total SO_2 emissions. Illinois' July 29, 2003, submittal was identical to a State variance which EPA had approved as a temporary revision on April 13, 2000. On November 12, 2004, EPA approved the July 29, 2003, permanent rule revision submittal as a direct final action. However, on December 13, 2004, EPA received an adverse comment on its approval. EPA withdrew the direct final approval on January 11, 2005. As stated in the January 11, 2005, withdrawal, EPA is not establishing a second comment period on this action.

DATES: This final rule is effective on December 10, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2004–IL–0003. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Mary Portanova, Environmental Engineer, at (312) 353–5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

On July 29, 2003, Illinois submitted a site-specific SO_2 State Implementation Plan (SIP) revision request for the Central Illinois Light Company, in Bartonville, Peoria County, Illinois (CILCO Edwards). The facility is now known as AmerenEnergy Resources Generating Company, Edwards Power Plant. The SIP revision request, which amended CILCO (AmerenEnergy) Edwards' SO_2 emission limits, was identical to an earlier temporary SIP revision, which EPA approved on April 13, 2000 (65 FR 19838). Therefore, on November 12, 2004 (69 FR 65378), EPA approved the July 29, 2003, permanent SIP revision request as a direct final action. However, on December 13, 2004, EPA received adverse comments on the action. EPA withdrew the direct final approval on January 11, 2005 (70 FR 1824). The adverse comments and EPA's responses are given in section III below.

II. What has changed in the Illinois SO_2 SIP?

CILCO (AmerenEnergy) Edwards operates three boilers, numbered 1, 2, and 3. Its SO_2 emission limits are codified at 35 Illinois Administrative Code (IAC) 214.561. Previously, the Illinois SO_2 SIP limited the emissions from Boilers 1 and 3 to 6.6 pounds of SO_2 per million British Thermal Units (lb/MMBtu) and Boiler 2's emissions to 1.8 lb/MMBtu (See 35 IAC 214.141). The July 29, 2003, SIP revision request incorporated rule changes which were identical to the limits in the variance submitted on May 21, 1999, and approved by EPA on April 13, 2000. The average SO_2 emissions from Boilers 1, 2, and 3, as a group, may not exceed 4.71 lb/MMBtu actual heat input. The average SO_2 emissions from any one boiler may not exceed 6.6 lb/MMBtu actual heat input. CILCO (AmerenEnergy) Edwards must determine compliance with these limits on a daily basis using the SO_2 methodology of the Phase II Acid Rain program set forth in 40 CFR part 75. A plantwide SO_2 emission limit for CILCO (AmerenEnergy) Edwards restricts Boilers 1, 2, and 3, as a group, to 34,613 pounds SO_2 per hour (lb/hr) on a 24-hour average. Compliance with the plantwide limit must also be determined on a daily basis using the Phase II Acid Rain methodology.

III. What comments did EPA receive, and how does EPA respond?

EPA received one set of comments from Heart of Illinois Sierra Club, dated December 13, 2004, which disagreed with EPA's direct final action.

Comment: The commenter cited that in 2004, the Environmental Integrity Project ranked CILCO (AmerenEnergy) Edwards 47th in the United States for SO_2 emissions. The commenter also stated that the CILCO (AmerenEnergy) Edwards facility ''emits approximately 13% of the state's SO_2 emissions and lacks even rudimentary pollution controls. The proposed emission rate of 4.71 lb/MMBtu reflects the facility's refusal to install pollution controls and is at least 4 times higher than the limits proposed for new coal-fired power plants.''

Response: EPA notes that the Environmental Integrity Project's report from May 2004 does rank CILCO (AmerenEnergy) Edwards as 47th in the nation by total tons per year of SO_2. The report also shows that the twelve power plants with the highest SO_2 emissions in the United States emitted more than twice CILCO (AmerenEnergy) Edwards' SO_2 emissions, in tons per year. Illinois' Annual Air Quality Report for 2003 (IEPA/BOA/04–019, August 2004) indicated that the State's total point source SO_2 emissions for 2003 were 512,320.6 tons per year (tpy), and the total SO_2 emissions from external fuel combustion electric generation sources were 348,602.0 tpy (Table C4). Total fuel combustion SO_2 emissions were estimated in the report as 414,050.0 tpy (Table 8). CILCO (AmerenEnergy) Edwards' 55,035 tpy SO_2 for 2003 would be 10.7%, 15.8%, and 13.3% of these totals, respectively. EPA agrees that CILCO (AmerenEnergy) Edwards is a large facility with significant SO_2 emissions. Its boilers have control systems for nitrogen oxides and particulate matter, but not for SO_2. As part of the variance in 1999, the Illinois Pollution Control Board required CILCO (AmerenEnergy) Edwards to research and report on techniques to control its SO_2 emissions. CILCO (AmerenEnergy) Edwards reported that installing flue gas desulfurization systems to control SO_2 would be both economically and technically infeasible. The CILCO (AmerenEnergy) Edwards facility does not have the necessary space available to install them.

The States prepare SIPs in order to maintain the ambient air quality standards, pursuant to section 110 of the Clean Air Act (CAA). In its review of State SO_2 SIPs and SIP revision requests, EPA generally does not prescribe specific control measures, nor does it comment on the size of individual facilities. Rather, EPA requires that the emission limits be clear, enforceable, and protective of the National Ambient Air Quality Standards (NAAQS) for SO_2. The level of

emissions allowed for new coal-fired plants in Illinois is not necessarily relevant to the emission limits of existing sources. Newer facilities may be expected to be more efficient or better suited for current control technology. Illinois may determine how best to manage its emission regulations, as long as the NAAQS continue to be maintained. In support of the 1999 variance, Illinois submitted air quality modeling results which evaluated the highest ground-level SO_2 concentrations possible with CILCO (AmerenEnergy) Edwards operating in compliance with the 1999 variance limits. This modeling, which included the SO_2 emissions from other nearby sources and a background SO_2 concentration value, showed that CILCO (AmerenEnergy) Edwards did not cause or contribute to a violation of the SO_2 NAAQS. EPA believes that the State has demonstrated that the CILCO (AmerenEnergy) Edwards rule revision will maintain the NAAQS.

Comment: The public was led to believe that the variance approved in 2000 would be a temporary measure.

Response: The 2000 action did in fact address a temporary measure. The Illinois Pollution Control Board (IPCB) anticipated that the company might ask for a permanent revision to its emission limits. The variance required CILCO (AmerenEnergy) Edwards to research and consider alternatives for complying with Phase II of the Acid Rain Program, report back to the IPCB, and if necessary, apply by February 28, 2002, for permanent SO_2 emission limit changes. The April 13, 2000, **Federal Register** made note of this provision at 65 FR 19839. It was not possible to inform the public of CILCO (AmerenEnergy) Edwards' intentions, since they were unknown to EPA at the time. CILCO (AmerenEnergy) Edwards might have reverted to its former limits, applied for the 1999 variance to be made permanent in 2002, or applied at any time for a different rule revision altogether.

Comment: The timetable for review and available information is inadequate. The commenter requested additional time for review and also requested that EPA provide a public hearing to discuss the SIP revision prior to acting on it.

Response: Upon receipt of the adverse comments, EPA withdrew the direct final action. The comment period was not extended. Thirty days is the usual comment period for a SIP action. The November 12, 2004, action was expected to be noncontroversial because it addressed a SIP revision which was identical to the SIP rule variance which EPA approved on April 13, 2000. There was a thirty day comment period for the April 13, 2000, action as well, and no comments were received at the time.

In accordance with SIP procedures, the State of Illinois provided an opportunity for a public hearing on this proposed action prior to its adoption by the Illinois Pollution Control Board. The Notice of Hearing for this petition was filed on August 21, 2002, and the public hearing was held on October 11, 2002. Representatives from the Illinois Environmental Protection Agency and CILCO (AmerenEnergy) Edwards gave statements. No members of the public attended the hearing.

Comment: EPA must complete the New Source Review investigation prior to approving this SIP revision. EPA should not approve a variance for a coal-fired power plant to skirt existing SO_2 limits for a facility that is under active investigation for a new source review violation.

Response: Ongoing New Source Review investigations are not pertinent to the SIP approval process. It is not possible to anticipate the final outcome of these investigations. Any effect on allowable emissions or SIP rules will occur on a separate schedule. The courts did not place restrictions on the facilities under investigation that would have precluded SIP rulemaking actions; nor did the fact of such an investigation occurring within EPA place such restrictions. Since CILCO (AmerenEnergy) Edwards' proposed new limits were properly adopted by the State and were shown through air quality modeling to protect the SO_2 NAAQS, they are Federally approvable.

Comment: The modeling fails to include new sources which have been built, permitted, or have applied for permits since 1999. The comment named Indeck-Elwood, Peabody's Prairie State Generating Station, Enviropower Franklin County Proposal, CornBelt Energy, the Dynegy Baldwin expansion, Franklin Power, the Marion IGCC proposal, a new coal plant in Springfield, Illinois, the Holcim Cement Plant in Missouri, and the proposed Peabody Thoroughbred power plant in Kentucky as other large SO_2 sources that were not included in the CILCO (AmerenEnergy) Edwards modeling.

Response: Illinois' SIP emission inventory does not include sources which are not yet operating. Several of the commenter's named sources were not operating in 1998, when the CILCO (AmerenEnergy) Edwards modeling was completed, and some have not begun operating to date. As part of the Prevention of Significant Deterioration (PSD) permitting process, new sources address the maintenance of the NAAQS with dispersion modeling that includes neighboring sources. Such modeling would address the combined impact of the new source and existing nearby sources.

Illinois' emission inventory for the CILCO (AmerenEnergy) Edwards rule included large SO_2 sources within 50 kilometers (km) of CILCO (AmerenEnergy) Edwards. The Industrial Source Complex Short Term model (ISCST3), EPA's recommended regulatory dispersion model in 1998, is not considered appropriate for use beyond a 50 km distance. All of the facilities named by the commenter are beyond 100 km from CILCO (AmerenEnergy) Edwards. A background SO_2 concentration, determined by actual monitored air quality data, was added to the modeled concentrations in a NAAQS analysis to represent the impacts of sources too distant to explicitly include in the modeling study.

Comment: CILCO (AmerenEnergy) Edwards must conduct SO_2 modeling that considers whether there are 24-hour or other SO_2 NAAQS violations, and whether there is any impact of CILCO (AmerenEnergy) Edwards on the Mingo National Wildlife Refuge or any other Class I area.

Response: CILCO (AmerenEnergy) Edwards conducted air quality modeling to address the impacts of the variance in 1998. The 1998 modeling addressed all three averaging times for the SO_2 NAAQS (3 hour, 24 hour, and annual). No violations were found. The Mingo National Wildlife Refuge and the next nearest Class I area, Mammoth Cave National Park, are both over 300 km from CILCO (AmerenEnergy) Edwards. As stated before, the ISCST3 model is not considered appropriate for such distances. CILCO (AmerenEnergy) Edwards' SIP revision request was submitted in 2002, and at that time, EPA did not require Class I area analyses when the source was more than 100 km from a Class I area. Some current models can evaluate long-range transport beyond 100 km, but CILCO (AmerenEnergy) Edwards' distance from Class I areas and the emission change represented by the 1999 variance do not indicate a need for additional long-range transport modeling.

Comment: EPA must consider CILCO (AmerenEnergy) Edwards' impact on $PM_{2.5}$ and 8-hour ozone NAAQS.

Response: The SO_2 SIP revision for CILCO (AmerenEnergy) Edwards retains the facility's 34,613 lb/hr overall SO_2 emissions cap and does not provide for an increase in $PM_{2.5}$ precursor emissions. The SIP revision does not provide for increases in ozone precursors. The States are required to

submit attainment plans for areas designated nonattainment for particulate matter less than 2.5 microns in diameter ($PM_{2.5}$) and ozone on an 8-hour average. These plans are being prepared separately under statutory schedules. Where appropriate, CILCO (AmerenEnergy) Edwards' emissions will be included in the analyses and control strategies. These ongoing actions do not affect the ability of CILCO (AmerenEnergy) Edwards to demonstrate that its SO_2 limits address the NAAQS for SO_2. If further revisions to CILCO (AmerenEnergy) Edwards' SO_2 limits are necessary as part of the $PM_{2.5}$ or ozone SIPs, Illinois must submit such revisions for Federal approval as they are developed.

Comment: EPA has not complied with the Endangered Species Act (ESA). Federal agencies are required to review their actions ''to insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species * * * .'' See Sec. 7(a)(2) of the Endangered Species Act.

Response: EPA disagrees with the commenter. Under relevant CAA provisions, States are entitled to administer their own plans for the implementation, maintenance, and enforcement of the national primary and secondary ambient air quality standards. 42 U.S.C. 7410. EPA is required to approve a State's revision to its SIP that meets all applicable CAA requirements. 42 U.S.C. 7410(k)(3). Illinois' proposed SIP revision for CILCO (AmerenEnergy) Edwards satisfies the conditions of section 110(l) of the CAA, the applicable CAA requirement. Accordingly, and as confirmed by recent Supreme Court precedent, the ESA requirements cited in the comments do not apply to EPA's decision to approve Illinois' SIP revision for CILCO (AmerenEnergy) Edwards. See 50 CFR 402.03; *National Ass'n of Home Builders* v. *Defenders of Wildlife,* 127 S. Ct. 2518 (2007) (*Defenders of Wildlife*).

Section 7(a)(2) of the ESA generally requires Federal agencies to consult with the relevant Federal wildlife agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of Federally-listed endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat of such species. 16 U.S.C. 1536(a)(2). In accordance with relevant ESA implementing regulations, this requirement applies only to actions in which there is discretionary Federal involvement or control. 50 CFR 402.03. In *National Ass'n of Home Builders* v. *Defenders of Wildlife,* 127 S. Ct. 2518 (2007) (*Defenders of Wildlife*), the Supreme Court examined these provisions in the context of EPA's decision to approve a State permitting program under the Clean Water Act (CWA). In that case, the Court held that when a Federal agency is required by statute to undertake a particular action once certain specified triggering events have occurred, there is no relevant agency discretion, and thus the requirements of ESA section 7(a)(2) do not apply. 127 S. Ct. at 2536.

With regard to EPA's transfer of CWA permitting authority to a State, the Court found that the relevant CWA provision mandated that EPA ''shall approve'' a State permitting program if a list of CWA statutory criteria are met. Therefore, EPA lacked the discretion to deny a transfer application that satisfied those criteria. *Id.* at 2531–32. The Court also found that the relevant CWA program approval criteria did not include consideration of endangered or threatened species, and stated that ''[n]othing in the text of [the relevant CWA provision] authorizes EPA to consider the protection of threatened or endangered species as an end in itself when evaluating [an] application'' to transfer a permitting program to a State. *Id.* at 2537. Accordingly, the Court held that the CWA required EPA to approve the State's permitting program if the statutory criteria were met; those criteria did not include the consideration of ESA-protected species; and thus, consistent with 50 CFR 402.03, the non-discretionary action to transfer CWA permitting authority to the State did not trigger relevant ESA section 7 requirements.

Similar to the CWA program approval provision at issue in *Defenders of Wildlife,* section 110(k)(3) of the CAA mandates that EPA ''shall approve'' a SIP submittal that meets applicable CAA requirements. 42 U.S.C. 7410(k)(3). With respect to SIP revisions such as Illinois' requested revision, section 110(l) of the CAA provides the relevant applicable CAA requirements and prohibits the Administrator from approving a SIP revision that ''would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement'' of the CAA. 42 U.S.C. 7410(l).

As was the case with the CWA requirements in *Defenders of Wildlife,* the SIP requirements contained in section 110 of the CAA do not include protection of listed species, and section 110(l) of the CAA does not state that consideration of impacts on listed species is a factor to consider in approving SIP revisions. EPA's action on State SIP submittals is governed by section 110 of the CAA, which unequivocally directs EPA to approve State plans meeting applicable CAA requirements.

EPA recognizes that it exercises some judgment when evaluating whether a SIP submittal meets specific statutory criteria. However, as the Supreme Court held in *Defenders of Wildlife,* the use of such judgment does not allow the Agency ''the discretion to add another entirely separate prerequisite''—such as the ESA section 7(a)(2) consultation requirements—to the list of required criteria EPA considers when determining whether it ''shall approve'' a SIP revision request. 127 S. Ct. at 2537.

Applying the reasoning of *Defenders of Wildlife,* the SIP approval criteria contained in the CAA do not provide EPA with the discretionary authority to consider whether approval of SIP revisions may affect any listed species. EPA has determined that Illinois has submitted a SIP revision request for CILCO (AmerenEnergy) Edwards that satisfies all of the applicable SIP requirements contained in section 110 of the CAA.[1] Thus, given the Supreme Court precedent and applicable regulations—see 50 CFR 402.03—EPA is without discretion to disapprove or condition the State's SIP revision request based on considerations regarding listed species, and the ESA requirements cited by the commenter are thus inapplicable to this approval action.

Comment: Approving a permanent variance appears to be illegal backsliding under CAA section 110, because the proposed rule would relax the clean air safeguards contained in the existing SIP.

Response: EPA disagrees. This SIP revision has been shown to maintain the SO_2 NAAQS under worst-case operating conditions. Therefore, it does not violate 110(l). Sections 110(l) and 110(n)(1) allow States to revise their SIPs and submit them to the EPA for review and approval.

IV. What Action Is EPA Taking?

EPA is approving a July 29, 2003, site-specific request to revise Illinois' SO_2

[1] On the basis of modeling demonstrating a worst-case allowable emissions scenario under the requested revision, EPA has determined that the CILCO (AmerenEnergy) Edwards SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress. Nor will it cause or contribute to exceedances of the National Ambient Air Quality Standards in other States. Therefore, the revision has met all applicable requirements under the CAA.

SIP for the Central Illinois Light Company E.D. Edwards Generating Station, now known as AmerenEnergy Resources Generating Company, Edwards Power Plant, in Bartonville, Peoria County, Illinois. The requested revision changes the SO_2 emission limits for the plant's three boilers.

V. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 2, 2008.

Lynn Buhl,

Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of 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 O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(171) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(171) On July 29, 2003, the Illinois Environmental Protection Agency submitted a site-specific revision to the State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the Central Illinois Light Company's E.D. Edwards Generating Station, now known as AmerenEnergy Resources Generating Company, Edwards Power Plant, in Bartonville, Peoria County, Illinois.

(i) Incorporation by reference.

Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 214: Sulfur Limitations, Subpart X: Utilities Section 214.561 E.D. Edwards Electric Generating Station which was amended at 27 *Illinois Register* 12101, effective July 11, 2003.

[FR Doc. E8–26492 Filed 11–7–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2331; MB Docket No. 07–280; RM–11379]

Radio Broadcasting Services; Linden, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a Petition for Rule Making issued at the request of George S. Flinn, Jr., proposing the allotment of Channel 267A at Linden, Tennessee, as its first local service. Channel 267A at Linden can be allotted, consistent with the minimum distance separation requirements of the Commission's Rules, at reference coordinates 35–39–45 NL and 87–44–25 WL with the imposition of a site restriction of 10.1 kilometers (6.3 miles) northeast of Linden. Due to the fact that Channel 267A at Linden already exists in the FM Table of Allotments, this final rule does not contain any amendatory language. *See* Supplementary Information, *supra*.

DATES: Effective December 8, 2008.