

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

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4. *Hand Delivery or Courier*: Deliver your comments to: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551-7039, or by e-mail at hamilton.heather@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no relevant adverse comments on this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 15, 2008.

John B. Askew,

Regional Administrator, Region 7.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2007-1096; FRL-8536-9]

Approval and Promulgation of Implementation Plans; Illinois; Voluntary Nitrogen Oxides Controls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 1, 2001, the Illinois Environmental Protection Agency (Illinois EPA) submitted a request for EPA approval of regulations governing Nitrogen Oxides (NO_x) emission allowances granted for the implementation of voluntary control of NO_x emissions from sources not otherwise covered under other Illinois NO_x emission control regulations. Illinois requested incorporation of these voluntary NO_x emission control and NO_x emission allowance regulations into the Illinois State Implementation Plan (SIP). We are proposing to disapprove these regulations as an amendment of the Illinois SIP.

DATES: Comments must be received on or before April 3, 2008. Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1096, by one of the following methods:

- *http://www.regulations.gov*: Follow the online instructions for submitting comments.

- *E-mail*: mooney.john@epa.gov.

- *Fax*: (312) 886-5824.

- *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18)), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18)), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of operation are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2007-1096. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hardcopy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hardcopy 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. It is recommended that you telephone Edward Doty, Environmental Scientist, at (312) 886-6057, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057, doty.edward@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean the EPA (or U.S. EPA). This supplementary information section is arranged as follows:

- I. What Action Are We Proposing for Illinois' Voluntary NO_x Emissions Reduction Rule and Requested SIP Revision?
- II. Background
- III. Summary of the State's Submittal
- A. What are the components and requirements of the subject rule?
- B. What is Illinois' basis for supporting approval of the subject rule as a SIP revision?
- C. How does the subject rule interface with or relate to other Illinois NO_x rules?
- IV. EPA Technical Review of the Subject Rule and SIP Revision Request
- A. Is the Subpart X rule specifically required by any EPA regulations or policies or requirements of the Clean Air Act?
- B. What EPA policies and requirements are applicable to the subject rule?
- C. Is the subject rule allowed under EPA policy and requirements?
- D. What are the differences in the monitoring requirements of Subpart X and those of the NO_x SIP call?
- E. Are there any source categories not covered by 40 CFR part 75 that are covered by Subpart X?
- F. What technical problems and issues of concern have we found for the subject rule?
- G. What are our proposed actions regarding the approvability of the subject rule?
- V. Statutory and Executive Order Reviews

I. What Action Are We Proposing for Illinois' Voluntary NO_x Emissions Reduction Rule and Requested SIP Revision?

Based on technical deficiencies and other technical concerns noted below for the Subpart X rule (35 Illinois Administrative Code (IAC), part 217, subpart X), we are proposing to disapprove the Subpart X rule as a revision to the Illinois SIP.

II. Background

On October 27, 1998 (63 FR 57356), EPA published a finding of significant contribution of ozone and ozone precursor transport for 22 States and the District of Columbia, and established state-specific NO_x emission budgets for these States (the final EPA rule is referred to as the NO_x SIP call). The October 27, 1998, final rule also established part 75 Continuous Emission Monitoring (CEM) requirements and part 96 NO_x emission trading program provisions under Volume 40 of the Code of Federal Regulations (CFR)

Illinois is included in the list of States covered by the NO_x SIP call, and as such, has been assigned a NO_x emissions budget for 2007 and subsequent years. Illinois, as required, has submitted a NO_x SIP with NO_x emission control regulations for Electrical Generating Units (EGUs), major non-EGU (industrial) boilers and

turbines, and major cement kilns¹ to achieve the NO_x emission reduction needed to achieve the State's NO_x emission budget. The State also established regulations to implement a NO_x emissions cap-and-trade program and to provide for NO_x emissions credit trading in a National NO_x emissions trading program (the NO_x Budget Trading Program).

As part of its efforts to comply with the NO_x SIP call, Illinois has established procedures for NO_x emission allowance trading, and has established a set-aside of a portion of the State's total NO_x emission allowances for new sources. To allow for additional NO_x emissions growth and to provide additional emission allowances for existing sources and new sources, the State has established a rule to provide for NO_x emissions control and NO_x emission allowance generation through the voluntary implementation of emission controls on various NO_x sources. The rule covering the NO_x emissions control and the generation of NO_x emission credits for sources voluntarily seeking these NO_x emission credits is referred to by the State as the "Subpart X Voluntary NO_x Emissions Reduction Program," (35 IAC part 217, subpart X), the subject rule of this proposed action and referred to here simply as the Subpart X rule. This rule was submitted to the EPA on May 1, 2001, for approval into the Illinois SIP.

III. Summary of the State's Submittal

The Subpart X rule covers the State's voluntary NO_x emission control and emissions credit program for sources not covered in the State's other NO_x emission control rules. Generally, sources that elect to be covered under the Subpart X rule are smaller NO_x sources with relatively low NO_x emissions during the ozone control period (May through September).

A. What are the components and requirements of the subject rule?

The Subpart X rule is divided into the following sections, whose requirements and provisions are summarized here.

Section 217.800 Purpose

The purpose of the Subpart X rule is to provide a method (procedure) and source requirements by which "additional" NO_x emission allowances may be generated for use (through the NO_x Budget Trading Program) by emission units subject to the

requirements of 35 IAC part 217, subpart U (NO_x Control and Trading Program For Specified NO_x Generating Units) and subpart W (NO_x Trading Program For Electrical Generating Units). Note that Subpart X sources would not be opt-in sources covered under Subpart U or Subpart W, which must meet different requirements. Sources subject to the Subpart X rule would generate additional NO_x emission allowances through NO_x emission reductions not otherwise required in Illinois' NO_x control rules. See additional discussions of this issue below.

Section 217.805 Emission Unit Eligibility

This section allows any owner or operator of a stationary NO_x source (with the exceptions/exclusions noted below) to submit a proposal for voluntarily reducing NO_x emissions during the ozone control period. The emission units seeking the NO_x emission reduction credits must meet the following criteria:

(1) They must discharge their NO_x emissions through a stack(s);

(2) They must be fossil fuel-fired;

(3) They must not be subject to the requirements of 35 IAC part 217, subparts T, U, V, or W;

(4) They must not be retired units pursuant to 40 CFR 96.5;

(5) Their owners/operators must not have elected to make the units "opt-in units" pursuant to 35 IAC part 217, subpart W; and,

(6) they may not be stationary internal combustion engines that emit more than 1 ton of NO_x per day during the ozone control period.

Section 217.810 Participation Requirements

Any owner or operator of a NO_x emissions unit meeting the source requirements of 35 IAC section 217.805 that seeks voluntary NO_x emission reduction allowances under this rule must:

(1) Submit a NO_x emission reduction proposal that meets the requirements of section 217.835;

(2) Request a NO_x emissions cap for all NO_x emission units at the source facility that are not subject to the requirements of 217 IAC part 217, subpart U or subpart W and that are that are of the same or similar source type as the units for which voluntary emission reduction allowances are sought. The owner or operator, however, may submit a demonstration that any emission unit(s) should not be included in the NO_x emission cap;

¹ EPA approved Illinois' EGU NO_x rule on November 8, 2001 (66 FR 56454) and Illinois' NO_x rules for major non-EGU boilers and turbines and major cement kilns on November 8, 2001 (66 FR 56449).

(3) Obtain a source permit, or an amendment to an existing source permit, for the emission source (collection of applicable emission units to be included in the emissions cap), with Federally enforceable conditions, containing the commitments in the NO_x emissions reduction proposal and implementing the emissions cap by the later of May 1, 2003, or the date on which the reduction in NO_x emissions will commence. If the emission reduction allowance will be generated by ceasing operation of a unit, the owner or operator must withdraw the applicable source permit for the unit or must request a revision to the source permit to reflect the shutdown of the unit by the later of May 1, 2003, or the date specified in the NO_x emission reduction proposal;

(4) Submit an emission baseline determination for each emissions unit subject to the NO_x emissions cap in compliance with the requirements of 35 IAC section 217.820; and,

(5) Meet the following monitoring requirements:

(a) Each emission reduction unit must comply with the monitoring requirements in 35 IAC section 217.850;

(b) The emission measurements recorded and reported (to the State) will be used to determine compliance of the emission reduction unit with the emission limitation specified in the source's emission reduction proposal, with the source's emission reduction proposal, and with the Federally enforceable permit conditions for the unit; and,

(c) The emission measurements recorded and reported will be used to determine compliance by the source with the emissions cap set forth in the NO_x emission reduction proposal and with the Federally enforceable permit conditions for the source facility.

The owner or operator of the emission reduction source facility must submit an annual certification to the Illinois Environmental Protection Agency (Illinois EPA) that demonstrates that the source facility has complied with the NO_x emissions cap and that the source facility has complied with the requirements of 35 IAC section 217.850.

Section 217.815 NO_x Emission Reductions and the Subpart X NO_x Trading Budget

NO_x emission reductions credited under the Subpart X rule must be quantifiable, verifiable, and Federally enforceable, and must meet one or more of the following criteria:

(1) NO_x emissions from the emission reduction unit for any ozone control period beginning in 2003 or after the

implementation of the voluntary NO_x emission control, whichever comes later, are lower than the unit's NO_x emissions baseline. The amount of NO_x emissions reduction must be determined in compliance with 35 IAC section 217.820, and the amount of creditable NO_x emission reduction must be determined to be in compliance with 35 IAC section 217.825;

(2) The emission reduction unit is permanently shut down after January 1, 1995, and the owner or operator requests a revision to the source operating permit to reflect the unit shutdown; or,

(3) During any ozone control period beginning in 2003, the emission reduction unit's control period (ozone control period) NO_x emission rate or hours of operation is reduced pursuant to Federally enforceable conditions in a source permit for such unit, resulting in an actual NO_x emission reduction relative to the unit's NO_x emissions baseline.

In the Federal NO_x Budget Trading Program, the EPA must adjust the State's trading portion of the State's NO_x emissions budget, as established in the NO_x SIP call, and create allowances for the creditable portion or the NO_x emissions reduction. NO_x emission allowances generated by Subpart X will be allocated to the recipient emission source facilities in accordance with Subpart X.

The Illinois EPA will submit an allocation to the EPA, and this allocation may be used for the purposes of demonstrating compliance with the requirements of 35 IAC part 217, subparts U and W. In other words, a source can trade allocated emission allowances to sources needing such emission allowances to meet the requirements of the State's NO_x SIP and EPA's NO_x SIP call and emissions trading program.

If EPA adjusts or fails to adjust the NO_x emissions trading budget for any applicable emission reduction unit, the Subpart X

Section 217.820 Baseline Emission Determination

An emission unit's NO_x emissions baseline will be determined by using one of the following procedures:

(1) By multiplying the unit's actual NO_x emissions during the 1995 calendar year by 5/12ths; or,

(2) If the NO_x emissions from the unit were not characterized in the annual emissions report for 1995, by determining the base-case amount included for such unit in EPA's NO_x SIP call emissions inventory, as specified in the "Technical Support

Document for Illinois Statewide NO_x Budget" (63 FR 17349).

If the NO_x baseline emissions for the 1995 ozone control period cannot be determined by either of the above methods, the emissions baseline will be determined based on the average emissions rate multiplied by the average number of hours of operation from two of the three ozone control periods, as selected by the emission reduction source owner/operator, prior to the year the emission reduction proposal is effective. The NO_x emission rate and hours of operation shall be determined based on the source unit's reported NO_x emission rate and hours of operation in the most recent annual emissions reports for the source unit.

Section 217.825 Calculation of Creditable NO_x Emission Reductions

The gross amount of ozone control period actual NO_x emission reductions will be determined pursuant to Section 217.820 (discussed above). Eighty percent of the actual NO_x emissions reduction achieved will be "creditable." Twenty percent of the actual NO_x emission reduction will be retired (non-creditable) for the benefit of air quality.

Section 217.830 Limitations on NO_x Emission Reductions

Each NO_x emission allowance issued is a limited authorization to emit one (1) ton of NO_x in accordance with the Federal NO_x Trading Program as set forth in 35 IAC part 217, subpart U. Either the EPA or the State has the authority to terminate or limit the issuance of such an emission allowance. Such an emission allowance does not constitute a property right for the source facility.

Section 217.835 NO_x Emission Reduction Proposal

The NO_x emission reduction proposal, to be filed by the owner or operator of the emission reduction unit must include the following in the emission reduction proposal:

(1) Information identifying each NO_x emissions unit at the source facility and the baseline NO_x emissions for each unit subject to the NO_x emissions cap;

(2) Information identifying each emission reduction unit for which the emission reductions have been or will be achieved;

(3) An explanation of the methods used to achieve the NO_x emission reductions;

(4) Documentation of the NO_x emission reductions, including supporting calculations and input data;

(5) Identification of the emission units subject to the NO_x emissions cap, and,

if all like-kind or same-type emission units are not to be included in the emissions cap, an explanation of how the owner/operator will ensure that production shifting will not occur to interfere with the emission reductions at the capped units;

(6) The ozone control period NO_x emission cap to be achieved by the source facility, including the baseline NO_x emissions for each emission reduction unit and the NO_x emission reduction for each emission reduction unit;

(7) The name and address of the owner or operator of each NO_x emission unit to which the NO_x emission allowances will be allocated, the subpart of 35 IAC part 217 to which each NO_x emission unit is subject, and the account number (NO_x trading account number) of the account representative for each such unit; and,

(8) Certification that the emission reductions specified in the proposal have been or will be achieved.

The owner or operator of an emission reduction unit must notify the Illinois EPA in writing within 30 days of any event or circumstance that makes the NO_x emission reduction proposal incorrect or incomplete.

The owner or operator of a source facility with an approved emission reduction proposal may request to withdraw the emission reduction proposal and to cease the creation of NO_x emission reduction allowances, and must comply with the following:

(1) Submit to the Illinois EPA a written request to withdraw from participation and to withdraw or revise the applicable source permit effective as of a specified date between (and not including) September 30 and May 1 (outside of the ozone control period). This submission requesting to withdraw must be made no later than 90 days prior to the requested effective date of the withdrawal;

(2) Submit to the Illinois EPA an annual compliance certification report for the control period immediately before the withdrawal is to be effective;

(3) The emission reduction source that withdraws from the requirements of Subpart X must comply with all requirements under its approved emission reduction proposal and Federally enforceable source permit for all years during which the emission reduction source is in the program, even if such requirements arise or must be complied with after the withdrawal takes effect;

(4) The effective date of the withdrawal will be specified by the State and will be prior to May 1 or after September 30 (the source withdrawal

will not be made effective during an ozone control period);

(5) If the State denies the request to withdraw, the owner or operator of the affected source may submit another request to withdraw in accordance with subsections (a) and (b) of 35 IAC section 217.835; and,

(6) Upon successful withdrawal from the program (from the voluntary emission reduction program and from the NO_x trading program), the source facility shall no longer be subject to the requirements of Subpart X.

Section 217.840 Agency Action

The Illinois EPA will notify the owner/operator of an affected source facility in writing of its decision with respect to the NO_x reduction proposal within 90 days after receipt of the proposal. The NO_x emissions reduction proposal will not be effective until:

(1) After the owner/operator of the emission reduction unit has obtained a source permit with Federally enforceable conditions addressing the requirements of Subpart X; or,

(2) If the NO_x emission reductions are being obtained by the shutdown of a unit, the owner/operator has either obtained a source permit with Federally enforceable conditions addressing the requirements of Subpart X or withdrawn the applicable source permit and the Illinois EPA has provided the EPA with a copy of the proposal and notice of Illinois EPA's proposed approval of the emission reduction proposal (and EPA has not disapproved such proposal) and has provided an opportunity for public comment on the permit withdrawal and on the State's proposed approval of the emission reduction proposal.

Emission allowances generated pursuant to the Subpart X rule will be issued to the recipient emission unit identified in the proposal for each ozone/emission control period in which the NO_x emission reductions are verified and the requirements of Subpart X continue to be met. The emission allowances shall be issued by May 1 after the ozone control period in which the NO_x emission reduction has occurred, and may be used (traded or sold) in any future emission control period. Note that the emission allowances are not granted and used until after the emission reductions have actually occurred.

Section 217.845 Emissions Determination Methods

The owner or operator of an emission reduction unit must demonstrate that the source facility has obtained the planned NO_x emission reductions, and has not exceeded its NO_x emission cap.

If the NO_x emission reduction is due to NO_x emission reductions resulting from the use of emission reduction technology, the NO_x emission rates for each emission reduction unit must be determined through the use of Continuous Emission Monitors (CEMs) in accordance with 35 IAC section 217.850 or through the use of any test methods or procedures provided in 40 CFR part 60 and approved by the Illinois EPA, or any method approved by the Illinois EPA when included as Federally enforceable conditions in a source permit issued or revised pursuant to Subpart X. If a test based on 40 CFR part 60 is to be used, an initial test must be conducted 90 days prior to the date the specified emission reductions will be obtained, or within 45 days of Illinois EPA's request for such test for NO_x emission reductions already obtained. The owner or operator of the emission reduction unit must notify the Illinois EPA in writing of any test performed to comply with the requirements of Subpart X, and must make this notification at least 30 days prior to such test.

If the NO_x emission reduction is due to a reduction in operating hours or to a reduction of the NO_x emission rate during the ozone control period, the owner/operator of the emissions unit must submit an initial compliance demonstration plan to the Illinois EPA 120 days prior to the date that the emission reduction will commence in compliance with the approved emission reduction proposal. Such a demonstration shall be based on the actual NO_x emission rate measured in accordance with 35 IAC section 217.850.

By November 1 following each ozone control period in which NO_x emission reductions are generated, the owner/operator of the emission reduction source must submit to the Illinois EPA a compliance certification, including supporting data, and must monitor and report the NO_x emissions during each ozone control period from all NO_x emission units subject to the NO_x emission cap.

At least 120 days prior to the date that the emission reduction source will commence NO_x emission reductions in compliance with its emission reduction proposal, the owner/operator of the source must submit to the Illinois EPA a performance evaluation of each CEM using the performance specifications given in 40 CFR part 60, appendix B.

Section 217.850 Emissions Monitoring

The owner/operator of an emission reduction source must install, calibrate, maintain, and operate CEMs during

each NO_x control period, or an alternative approved by the Illinois EPA and included in a Federally enforceable permit, for measuring NO_x emissions. The CEMs must be operated and data recorded during all periods of operation of the emission units. The owner/operator must also collect and record CEM quality assurance data during calibration checks and zero and span adjustments. The procedures under 40 CFR part 60.13 (incorporated by reference into Subpart X) must be followed in the installation, evaluation, and operation of each CEM.

If NO_x emission rates, in pounds/hour, are not obtainable during CEM breakdowns, repairs, calibration checks, or zero and span adjustments, NO_x emission data must be obtained using the data substitution procedures contained in 40 CFR part 75, subpart D. If NO_x emission rates, in pounds per million British thermal unit (Btu) of heat input, are not obtainable during CEM breakdowns, repairs, calibration checks, or zero and span adjustments, NO_x emissions data must be obtained by using the rolling hourly average of the NO_x emissions recorded for the previous 30 day period of operation if the data capture of such period is 95 percent or greater and the period of missing data is equal to or less than 24 consecutive hours. If the data capture for the previous 30 day period is less than 95 percent or the period of missing data is greater than 24 hours, the NO_x emission data must be obtained using the highest hourly NO_x emission average recorded during the previous 30 days of operation.

The CEM data must be subject to the quality assurance procedures and requirements of 40 CFR part 60, appendix F.

Section 217.855 Reporting

By November 1 of each year beginning in the first year NO_x emission reductions are generated, an owner/operator of an emission reduction unit must, as a seasonal component of the source facility's annual emission report, report to the Illinois EPA the total ozone control period NO_x emissions for each NO_x emission unit subject to the NO_x emissions cap.

Within 30 days after receipt of performance test data from initial performance tests for emission units and CEMs, the owner/operator of a subject emission source must report the test data to the Illinois EPA.

Section 217.860 Recordkeeping

For each NO_x emission unit subject to a NO_x emissions cap, the owner/

operator must keep the following records:

- (1) Daily, monthly, and control period operating hours;
- (2) Type and quantity of each fuel used daily during the ozone control period;
- (3) Ozone control period capacity of fuels fired;
- (4) Monitoring records; and,
- (5) The performance test data from the initial performance test for emission reduction unit and the performance evaluation for each CEM.

The owner/operator of an emission reduction source must maintain records of the following information for each operating day and for each NO_x emissions unit subject to a NO_x emissions cap:

- (1) Date;
- (2) Average hourly NO_x mass emissions rate in pounds per hour;
- (3) Control period total NO_x mass emissions to date;
- (4) Identification of periods when emission data have been excluded from the calculation of NO_x mass emissions, the reasons for excluding the data, and corrective actions taken;
- (5) Identification of the time when the NO_x emissions concentrations exceeded the full spans of the CEMs;
- (6) Descriptions of any modifications of the CEMs that could affect the ability of the CEMs to comply with performance specifications; and,
- (7) Results of daily CEM drift tests and quarterly accuracy assessment as required under 40 CFR part 60, subpart F.

The owner/operator of any NO_x emission reduction source subject to the CEM requirements of Subpart X must submit a compliance certification by November 1 following each ozone control period in which NO_x emission reductions are generated.

Data records are to be maintained for a period of 5 years after their creation.

Section 217.865 Enforcement

If a NO_x emission reduction source experiences excess NO_x emissions during an ozone control period, the owner/operator of the source must purchase NO_x emission allowances through the NO_x trading program to compensate for the excess NO_x emissions. The following NO_x allowance purchase levels are required:

- (1) For one control period of excess NO_x emissions, the owner/operator must purchase NO_x emission allowances to cover two (2) times the NO_x emission excess;
- (2) For two control periods of excess NO_x emissions, the owner/operator must purchase NO_x emission allowance

to cover three (3) times the total NO_x emission excess for the two control periods; and,

- (3) For three control periods of excess NO_x emissions, the owner/operator must purchase NO_x emission allowances to cover four (4) times the total NO_x emission excess for the three control periods.

The purchased NO_x emission allowances must be surrendered to the Illinois EPA by December 31 following the ozone control period in which the emission reduction source has excess NO_x emissions.

After three consecutive ozone control periods of excess NO_x emissions, the source may not generate NO_x emission reduction credits to qualify for NO_x emission reduction allowances. All surrendered NO_x emission allowances are retired for the benefit of air quality.

B. What is Illinois' basis for supporting approval of the subject rule as a SIP revision?

On October 26, 2001, EPA met with the Illinois EPA to discuss a number of pending issues. Included in this discussion was a discussion concerning the basis for supporting the approval of the Subpart X rule as a SIP revision. The following presents points raised by the Illinois EPA to support the approval of the Subpart X rule.

General Points

The Illinois EPA notes that the Subpart X rule is an innovative regulatory effort to obtain additional NO_x emission reductions from sources that would otherwise not be controlled. This will provide for more reductions in regional NO_x emissions than would otherwise be obtained solely through compliance with Illinois' other NO_x emission control rules under the NO_x SIP call. The Illinois EPA expects Subpart X to provide NO_x emission reductions within the State of Illinois even though sources complying with Subpart X will be able to trade away the granted NO_x emission allowances. This is due to the retirement of 20 percent of the Subpart X NO_x emission reductions as a benefit for improved air quality.²

The Illinois EPA believes that Subpart X meets EPA's Economic Incentive Program (EIP) guidance ("Improving Air Quality with Economic Incentive Programs," EPA-452/R-01-001, January

² Review of an Illinois Pollution Control Board (IPCB) hearing record also shows that the State also views the retirement of 20 percent of the generated NO_x emission allowances as giving the EPA a further reason for accepting 40 CFR part 60 monitoring requirements for Subpart X sources in lieu of 40 CFR part 75 monitoring requirements, as required under the NO_x SIP call.

2001), and, therefore, is approvable based on this policy. The EIP guidance provides for the use of EIPs to comply with the NO_x SIP call.

The Illinois EPA notes that Subpart X has the potential to reduce costs of compliance for sources involved in the NO_x trading program. Under the NO_x trading program, some sources will be forced to purchase NO_x emission allowances. Providing for additional tradable NO_x emission allowances through Subpart X may provide lower cost NO_x emission allowances than may be available from EGUs and major non-EGU sources participating in the NO_x trading program.

NO_x Emission Reductions

The Illinois EPA points out that Subpart X will benefit the environment by retiring 20 percent of the NO_x emission reductions resulting from this rule. Sources complying with Subpart X will only be able to obtain tradable NO_x emission allowances for 80 percent of the NO_x emission reductions they have achieved.

The NO_x emission reductions must be quantifiable, verifiable, and Federally enforceable. This distinguishes Subpart X from the type of emission reduction program expected under EPA's stationary source voluntary measures policy.

The Illinois EPA notes that the requirement for an emissions cap on "similar" units at a NO_x emission reduction source is also a very important feature of the Subpart X rule. Since reduction of operating hours or shutdown of an emissions unit are an acceptable procedure for obtaining NO_x emission reductions, the emissions cap prevents a source from shifting operations or production between source units, producing artificial emission reduction credits.

The Illinois EPA also notes that the Subpart X emission reductions are Federally enforceable since all source-specific emission reduction plans must be incorporated into Federally Enforceable State Operating Permits (FESOPs). Adequate emission recordkeeping and reporting requirements are provided to allow such enforcement.

Compliance and Enforcement Mechanisms

The State asserts that non-compliance deterrence mechanisms are built into the Subpart X rule. These mechanisms include:

(1) Sources subject to Subpart X must verify emission reductions at the end of each ozone control season;

(2) The EPA must recognize the NO_x emission reductions as real before it creates NO_x emission allowances for the complying source's use in the NO_x trading program;

(3) NO_x emission allowances granted by the EPA cannot be used until the ozone control period following their generation (the source cannot trade or use projected future NO_x emission allowances);

(4) Failure to comply leads to increasingly stringent penalties (each succeeding ozone control period of noncompliance leads to more stringent emission reduction penalties), including the surrendering of NO_x emission allowances; and,

(5) The State also has its standard mechanisms available to enforce the NO_x emission reductions for sources complying with Subpart X.

Subpart X Meets Requirements of EPA's EIP Guidance

The Illinois EPA notes that there are three fundamental principles to all EIPs: Integrity; equity; and, environmental benefit. The Illinois EPA believes that the Subpart X rule complies with these principles, and, therefore, would qualify as an EIP.

From the standpoint of integrity, the Illinois EPA notes that emission reductions resulting from an EIP emissions control program must be: Surplus; quantifiable; enforceable; and, permanent. The Illinois EPA believes that the Subpart X rule would produce NO_x emission reductions meeting these requirements. The resulting NO_x emission reductions are surplus because they are not otherwise relied on for attainment purposes in the SIP, and are not required by other SIP-related emission control requirements, consent decrees, or Federal rules or requirements.

The NO_x emission reductions that would result from the Subpart X rule are enforceable because: They are independently verifiable; program violations are defined through the identification of excess emissions and FESOP violations; those sources and owner/operators liable for violations can be identified; both the State and EPA maintain the ability to apply penalties and secure appropriate corrective actions where applicable; citizens have access to all emissions-related information obtained from the sources; citizens can file suits against the sources; and, the NO_x emission reductions are enforceable in accordance with other EPA guidance on practicable enforceability.

The emission reductions are quantifiable because they can be reliably

measured and determined. Subpart X requires source monitoring and recordkeeping of NO_x emissions and NO_x emission reductions.

The Illinois EPA believes that the NO_x emission reductions can be considered to be permanent if the State is able to ensure that no emission increases (compared to emissions if there was no EIP) occur over the time period defined in the SIP. The State believes that Subpart X sources are similar to opt-in units under the NO_x Budget Trading Program, but with even more stringent requirements due to the emissions cap requirement of the Subpart X rule. Emission allowances are earned annually due to retrospective emission reductions (therefore, they are equivalent to permanent emission reductions). The NO_x emission allowances to be traded by Subpart X sources are not based on "future" NO_x emission reductions. Generated emission allowances are verified annually, and cannot be granted if the emission reductions have not already occurred. Withdrawal of a source from the program and its emission reductions are controlled by the State, who must approve such a withdrawal. A withdrawing source cannot generate new NO_x emission allowances subsequent to withdrawal from the Subpart X program. Subpart X should most appropriately be viewed as a one-year emission reduction program that is subject to annual renewal.

The State views the Subpart X rule as a compliance flexibility EIP. Thus, emission reductions are permanent if the State is able to ensure that no emission increases occur over the time period that Subpart X exists within the SIP.

The State views Subpart X as providing equity. All segments of the population are protected from localized public health problems since the Subpart X rule applies throughout the State. No segment of the population receives a disproportionate share of the program's benefits and non-benefits. Sources will volunteer to provide the NO_x emission reductions, and may potentially benefit economically from the sale of the NO_x emission allowances, or, at minimum, defray emission control costs.

The Subpart X rule will provide environmental benefits. The application of the rule will provide additional NO_x emission reductions not already required by existing NO_x control rules. Retiring 20 percent of the NO_x emission reductions will provide additional environmental benefits. Application of the rule should reduce regional NO_x

emissions within Illinois and ozone transport to downwind States.

C. How does the subject rule interface with or relate to other Illinois NO_x rules?

Under Illinois' existing NO_x control rules, EGUs and other covered sources may choose to reduce NO_x emissions below State-required levels (below levels needed to meet the State's NO_x emission budget) to produce tradable NO_x emission allowances sold through EPA's NO_x Budget Trading Program. Other EGUs may find it necessary to purchase NO_x emission allowances through the trading program to meet Illinois' emission budget and facility-specific NO_x emission limits. The sale and purchase of NO_x emission allowances through the trading program allows a large number of sources to more economically meet NO_x emission limits and allows the NO_x SIP call (and CAIR) States to meet required NO_x emission limits.

As noted above, the Subpart X sources producing NO_x emission allowances would be able to trade/sell the emission allowances to sources subject to Illinois' Subpart U and Subpart W NO_x rules. The Subpart U and Subpart W sources would be able to use the purchased NO_x emission allowances to meet the State's required NO_x emission limits.

To make sure that generated NO_x emission allowances are truly surplus and not double counted, Subpart X sources may not be subject to the NO_x emission control requirements of Illinois' Subparts T (Cement Kilns), U (NO_x Control and Trading Program for Specified NO_x Generating Units), V (Electric Power Generation), or W (NO_x Trading Program for Electrical Generating Units) of 35 IAC part 217 (Nitrogen Oxides Emissions). Other than these source restrictions, Subpart X does not further limit the types of NO_x sources that could be included under Subpart X (as long as the NO_x emission reductions can be quantified, enforced, and can be demonstrated to exist throughout the ozone control periods).

Subpart X requirements are clearly meant to provide supplemental NO_x emission reductions aimed at compliance with EPA's NO_x SIP call, and, thus, are directed at the control of inter-state transported ozone. Subpart X emission controls may also provide additional reductions of transported ozone and NO_x within the State of Illinois, reducing peak ozone concentrations in Illinois' ozone nonattainment areas. This is particularly true if Subpart X sources trade generated NO_x emission allowances to sources downwind of the ozone

nonattainment areas (St. Louis/Metro-East St. Louis and Chicago) or located outside of the State of Illinois. Although the State intends to support the trading of NO_x emission allowances generated under Subpart X to sources controlled under Subparts U and W of 35 IAC part 217, the State has placed no restrictions on the trading of Subpart X-generated NO_x emission allowances to sources only within the State of Illinois. Subpart X sources are free to trade emission allowances to sources outside of Illinois. Such trades would benefit Illinois ozone nonattainment areas by effectively removing NO_x emissions from the State of Illinois.

IV. EPA Technical Review of the Subject Rule and SIP Revision Request

A. Is the Subpart X rule specifically required by any EPA regulations or policies or requirements of the Clean Air Act?

The subject rule is not needed to meet the requirements of an ozone attainment plan or to meet other specific NO_x emission control requirements of the CAA or EPA regulations.

B. What EPA policies and requirements are applicable to the subject rule?

Review of the EPA NO_x policies and the language and intent of the Subpart X rule and its supporting documentation shows that three separate EPA policies may be relevant to some extent in the review of the Subpart X rule. First, since the primary purpose of the Subpart X rule is to provide sources with tradable NO_x emission allowances for participation in EPA's NO_x Budget Trading Program, those portions of EPA's NO_x SIP call policy dealing with NO_x emission allowances and NO_x allowance trading, as well as NO_x SIP call source monitoring requirements, must be considered (**Federal Register**, "40 CFR parts 51, 72, 75, and 96 Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule," 63 FR 57356, October 27, 1998). This policy has the most significant impact on our view of the approvability of the Subpart X rule.

Second, since the Subpart X rule involves the voluntary control of stationary sources and the incorporation of that rule into the Illinois SIP, one must consider EPA's policy regarding the incorporation of voluntary stationary source emission reduction programs into SIPs (Memorandum, from John Seitz, Director, Office of Air Quality Planning and Standards, to Air

Division Directors, Regions 1–10, United States Environmental Protection Agency, "Incorporating Voluntary Stationary Source Emission Reduction Programs Into State Implementation Plans—FINAL POLICY," January 19, 2001). It is concluded, however, that this policy is generally not applicable in this situation.

The voluntary measures policy was designed with the assumption that the emission reduction credits would be applied to achieve compliance with SIP attainment, maintenance, and Rate-Of-Progress (ROP) requirements (particularly those for ozone SIPs), and that the voluntary measures program would provide emission reductions that are quantifiable, surplus, permanent, and enforceable (by the State). This policy, however, does not address the NO_x emission reduction requirements of EPA's NO_x SIP call. Therefore, this policy is of minimal relevance to the intended use of the Subpart X rule, and, therefore, to the Subpart X rule itself.

Finally, as noted above, the Illinois EPA views Subpart X as a rule that provides for an EIP. Therefore, we need to consider EPA's policy addressing EIPs. Due to the real intent of Subpart X (to produce tradable NO_x emission allowances for sale in EPA's NO_x trading program), this policy is not as relevant as the NO_x SIP call policy. Although the EIP policy clearly indicates that the EIPs may be used to comply with EPA's NO_x SIP call policy, the EIP policy also clearly notes that the use of an EIP does not override the requirements of the NO_x SIP call itself. Any requested NO_x SIP revision failing to meet the requirements of the NO_x SIP call would also fail to comply with the requirements of the EIP policy. In this case, the more critical policy/requirements of concern are those of the NO_x SIP call itself rather than other aspects of the EIP policy. For this reason, the EIP policy is not given further consideration here.

C. Is the subject rule allowed under EPA policy and requirements?

As noted above, the NO_x SIP call is the most relevant policy considered here. The NO_x SIP call does not specifically address SIP revisions that provide for voluntary NO_x emission controls in the manner covered in Illinois' Subpart X rule. Nonetheless, the NO_x SIP call does encourage States to use whatever NO_x emission reductions they deem necessary to achieve their NO_x state NO_x emission budgets in a cost-effective and reasonable manner. In addition, the NO_x SIP call does not rule out the possibility of achieving the NO_x

emission reductions through the use of voluntary controls as long as such resulting emission reductions are quantifiable, monitorable, and achieve valid NO_x emission reductions during the NO_x control period. It is concluded that the NO_x SIP call does not directly forbid the generation of NO_x emission allowances using voluntary emission controls and, therefore, may allow such emission control measures.

The monitoring aspects of Subpart X, as more thoroughly discussed below, are the main issue of interest and concern in this case. The NO_x SIP call is very specific about the types of emissions monitoring and reporting that are required to meet the NO_x SIP call and emissions trading requirements. Subpart X, as discussed below, contains monitoring requirements which differ from those discussed in 40 CFR part 75.

D. What are the differences in the monitoring requirements of Subpart X and those of the NO_x SIP call?

As noted above, Subpart X requires major NO_x emission sources to install and operate CEMs. Subpart X, however, would also allow sources to use alternative monitoring techniques approved by the State and included in Federally enforceable source permits. Subpart X requires the use of CEMs to follow requirements in 40 CFR part 60, and does not require the use and reporting of CEM data to comply with 40 CFR part 75. The failure of Subpart X to require strict adherence to the requirements of 40 CFR part 75 for CEM data is a significant shortfall in the rule.

With regard to non-CEM monitoring techniques, 40 CFR part 75 does permit the use of an optional non-CEM approach to determine hourly sulfur dioxide, carbon dioxide, and NO_x emissions based on default or fuel- and unit-specific emission rates (per unit of heat input) and hourly fuel usage (heat input) rates for low-mass emission units. This approach is not allowed for coal-fired (solid fuel-fired) units. For NO_x, the "low mass emissions unit" cannot emit NO_x at a level exceeding 50 tons annually and 25 tons during the ozone control period to qualify for the use of the non-CEM monitoring procedures. All coal-fired units, regardless of the NO_x emission rates, must use CEMs meeting the requirements of 40 CFR part 75 to qualify for inclusion in the NO_x Budget Trading Program.

Subpart X places no emissions size limit on the sources seeking to use monitoring methods other than the use of CEMs. In addition, Subpart X would not restrict the use of alternative monitoring techniques to natural gas-

fired or fuel oil-fired units as would 40 CFR part 75.

Based on these observations, Subpart X could lead to monitoring techniques that are incompatible with the requirements of 40 CFR part 75 and may produce results which may not meet the expressed "level playing field" goal of the NO_x SIP call and NO_x Budget Trading program.

With regard to the requirements for CEMs (assuming a source cannot find or chooses not to pursue an "acceptable" alternative), it is noted that the CEM requirements in 40 CFR part 60 are not as prescriptive as the CEM requirements in 40 CFR part 75. The 40 CFR part 60 CEM monitoring requirements are not directed at the needs of the NO_x Budget Trading Program. Based on the restrictive wording of the NO_x SIP call and 40 CFR part 96 regarding the need for monitoring, recordkeeping, and reporting to comply with the requirements of 40 CFR part 75, EPA believes that the monitoring requirements of Subpart X are not sufficient to assure the adequacy of the Subpart X NO_x emission allowances meeting the requirements of the NO_x allowance trading program as specified in 40 CFR part 96.

The Illinois EPA has indicated that, given the relatively small source size of sources likely to pursue Subpart X NO_x emission reductions and tradable NO_x emission allowances, it is not cost-effective for these sources to be required to comply with the monitoring requirements of 40 CFR part 75. Information contained in an Illinois Pollution Control Board hearing record for Subpart X indicates that the State expects most Subpart X sources to have NO_x emission levels at or below 25 tons per ozone season (April through October). Given the low NO_x emissions expected, it is unclear why the State has not adopted the small-source procedures of 40 CFR part 75. It is recognized that some Subpart X sources would be coal-burning sources, and, thus, excluded from the use of the small-source provisions of 40 CFR part 75.

Illinois has not provided cost-effectiveness estimates for these sources to demonstrate that the 40 CFR part 75 CEM requirements are significantly less cost-effective than the CEM requirements of 40 CFR part 60. Illinois has also not demonstrated that 40 CFR part 60 monitoring requirements would provide NO_x emission estimates comparable to those of 40 CFR part 75.

E. Are there any source categories not covered by 40 CFR part 75 that are covered by Subpart X?

The requirements of 40 CFR part 75, and particularly those dealing with low mass emission sources, are primarily directed at sources that operate and generate tradable NO_x emission allowances through emission reductions on an ongoing basis. The requirements of 40 CFR part 75 cannot be applied to the crediting of source closures as NO_x emission allowances in the NO_x trading program. Review of the Subpart X rule and documentation of the NO_x emission allowances it would generate shows that Subpart X would produce such NO_x emission allowances.

A source category not addressed by 40 CFR part 75, but which may be addressed through Subpart X is NO_x emission reductions resulting from NO_x emission controls at small solid fuel-fired combustion units. The "small source" provisions of 40 CFR part 75 cannot be applied for such sources. It is not clear at this time what the total NO_x emission reduction potential is for such sources.

F. What technical problems and issues of concern have we found for the subject rule?

1. General Comments and Concerns

We have several major areas of concern regarding the Subpart X rule and its intended use. First, the rule does not guarantee that NO_x emission allowances would only be awarded for emission reductions that are real and that are additional NO_x emission reductions beyond those that would have occurred anyway, i.e., even in the absence of Subpart X. By providing credit for source shutdowns or reduced utilization of units claiming credit under Subpart X (Subpart X units) and for NO_x emission reductions made as long ago as 1996, the Subpart X rule would lead to NO_x emission allowances for NO_x emission reductions occurring before the Subpart X rule was adopted by the State. In addition, despite an emissions cap on all similar source units at a source facility, this rule could still allow NO_x emission allowances for shifting of utilization/production from Subpart X units to unregulated units within the same source facility or to units in another source facility and so could lead to crediting of source changes with no real NO_x emission reductions.

Second, we are concerned that the Subpart X rule would not require the same level of monitoring required of sources participating in the NO_x Budget Trading Program. This raises questions

concerning the equity of Subpart X-generated NO_x emission allowances versus those generated by sources following the monitoring requirements of 40 CFR part 75. Although the State has argued that the 20 percent set-aside of NO_x emission reductions from Subpart X units to benefit the environment should offset this concern, we propose that the State has not provided a basis for concluding that the 20 percent set-aside actually addresses this deficiency.

Finally, even though the State has argued that Subpart X constitutes an EIP and EIPs may be used to provide NO_x SIP call emission credits, we again note that the EIP guidance also states that NO_x SIP call requirements supersede EIP requirements. This means that rules meeting EIP requirements may not be adequate to meet NO_x SIP call/NO_x allowance trading requirements. We believe that this is the situation with the Subpart X rule.

2. Comments on Specific Subpart X Rule Provisions

Section 217.810

This section provides for a source emission cap to prevent shifting of utilization from the Subpart X units to other units of the same type at the source facility. This emissions cap does not address shifting of utilization from the Subpart X unit(s) to other units at other source facilities or at the same facility. There is no basis for assuming that this type of shifting cannot occur, e.g., for small electric generating units not covered in the State's current NO_x rules for electric generating units. In addition, the Subpart X rule provides for requests for exceptions from the requirement to include other units at the source facility in the emissions cap, but provides no standard for resolving such requests. (Section 217.835(a)(5) suggests what showing should be made, but does not make this the standard for approval.) Moreover, in light of the importance of not crediting utilization shifting, exceptions to inclusion in the source emissions cap allowed in this section is not acceptable because this section of the Subpart X rule does not require such exceptions to be approved by both the State and the EPA.

The rule does not specify how the emissions cap is to be calculated. This needs to be specified explicitly or must be subject to State and EPA approval if done on a case-by-case basis. We believe that the rule errs in not requiring the use of the same methodology for setting the baseline for the Subpart X unit and for setting the emissions cap for all non-NO_x SIP call units (all NO_x emission

units not covered by the State's NO_x emission control rules in the State's NO_x SIP) at the source facility.

This section also provides for the crediting of NO_x emission reductions resulting from source shutdowns. As noted in comments below regarding section 217.815 of the rule, we have serious concerns about granting such NO_x emission allowances.

Section 217.815

The rule allows for NO_x emission reduction credits where a unit: uses an emission reduction technology; permanently shuts down; or reduces the NO_x emission rate or operating hours where this is reflected in the unit's source permit. We have the following concerns about such NO_x emission reduction credits:

a. We believe that this section is unacceptable because it would result in the granting of emission credits for source shutdowns. The source shutdown credit would allow a source owner to shut down a unit and shift its utilization to another unit at a different source facility. The source emissions cap provision of the Subpart X rule does not address this potential. In addition, this section also would allow the source owner to shut down a unit that is at or near the end of its useful life and to get an emission reduction credit for every year after the shutdown of the unit. In this situation, it is likely that the source shutdown would have occurred even without the existence of the Subpart X rule. This is particularly problematic since the Subpart X baseline for NO_x emission reduction credits resulting from source shutdowns is 1995. This means that units shut down prior to the State adoption of the Subpart X rule would be given NO_x reduction credits. This is unacceptable;

b. Credit for lowering the NO_x emission rate is generally acceptable, provided that the total NO_x emissions from a source facility actually decrease. This section is unacceptable, however, because it would result in the granting of NO_x emission allowances even though a source owner/operator may simply shift utilization from the Subpart X unit to a unit at another facility. The source emission cap of Subpart X does not address this potential;

c. The rule states that the NO_x emission reductions must be quantifiable, verifiable, and Federally enforceable. It is unclear whether these requirements are in addition to other requirements in the rule, which, as discussed below, do not ensure that the NO_x emission reductions are properly quantifiable and verifiable. In addition, the Subpart X rule does not specify

what showing must be made by the source owner or operator to satisfy these requirements; and,

d. The Subpart X rule states that credited NO_x emission reductions (other than those due to unit shutdowns) may start in 2003. This is in conflict with the NO_x Budget Trading Program and NO_x SIP call requirements, which would not credit NO_x emission reductions occurring prior to 2004. NO_x emission credits should not be credited for NO_x emission reductions occurring prior to the start of the NO_x Budget Trading Program.

Section 217.820

To establish the emissions baseline from which NO_x emission reductions are determined, the rule allows the source owner/operator to use the unit's 1995 NO_x emissions multiplied by ⁵/₁₂ or its 1995 ozone season emissions as reflected in EPA's NO_x SIP call emissions inventory. We consider this baseline period to be too far into the past. The rule fails to require the source owner/operator to use the most current unit emissions (those determined just prior to the implementation of the Subpart X NO_x emission reduction) for the baseline emissions. We are concerned about this issue for the following reasons:

a. Using a 1995 baseline allows the source owner/operator to get credit for NO_x emission reductions that occurred several years in the past prior to the implementation of the State's NO_x control rules and prior to the adoption of Subpart X. Allowing credit for NO_x emission reductions that have already occurred and allowing these credits to be traded to sources that need such credits to meet NO_x SIP call-based emission limits would jeopardize Illinois' ability to meet the NO_x SIP call emission reduction requirements;

b. Some NO_x emission reductions from 1995 for EGUs and non-EGUs are already reflected in the State's NO_x emission budget established in the NO_x SIP call. For example, the State emissions budget for EGUs used 1995 heat input adjusted for growth, with growth reflecting new units and increases and decreases in heat input for existing units occurring through 2004, the implementation year for the NO_x SIP call. Giving credit for NO_x emission reductions since 1995 through Subpart X could double count emission reductions that are reflected in the State's NO_x emission budget; and,

c. It may be reasonable to allow some averaging of recent years' ozone season emissions data since the most recent year may not be representative of normal unit operation. The Subpart X

rule fails to specify a short period for such averaging, and errs in leaving the averaging period to the discretion of the source owner/operator.

Section 217.835

We believe that this section is deficient in that it does not require the source owner/operator to define how the source's emission cap is determined. The source owner/operator simply has to declare the emissions cap and which source units are covered by the emissions cap.

Subsection (a)(7) of this rule section allows the source owner/operator to specify which source units are to be granted NO_x emission allowances. The purpose of this subsection is unclear. NO_x emission allowances should only be allocated to the Subpart X unit, with the source owner/operator then given the ability to transfer the NO_x emission allowances to units subject to the NO_x Budget Trading Program. This subsection could be incorrectly interpreted as allowing the source owner/operator to assign the NO_x emission allowances to non-Subpart X sources (those not achieving new NO_x emission reductions).

Section 217.840

We disagree with the granting of emission reduction credits for source shutdowns as allowed in this section of the Subpart X rule. We particularly disagree with the granting of NO_x emission allowances for source shutdowns occurring prior to the adoption of Subpart X and prior to the approval of the Subpart X rule as a SIP revision.

Section 217.845

As noted in our comments on sections 217.815 and 217.840 above, there should be no NO_x emission allowances granted for a source shutdown or reduced utilization. This section is unacceptable because it allows the State to approve such emission allowances.

This section allows the use of emission monitoring under 40 CFR part 60. As discussed elsewhere in this proposed rule, this requirement is unacceptable for the granting of NO_x emission allowances to be used in EPA's NO_x Budget Trading Program. NO_x emission reductions supporting such NO_x emission allowances must be confirmed through source monitoring meeting the requirements of 40 CFR part 75.

Section 217.850

40 CFR Part 60 Versus 40 CFR Part 75 Monitoring

This section would require compliance with 40 CFR part 60 for monitoring of source emissions from a Subpart X unit. Because the Subpart X units are generating NO_x emission allowances that will be traded to and used by other units that are subject to the NO_x Budget Trading Program, the Subpart X units should meet the same monitoring requirements as other units subject to the NO_x Budget Trading Program. Therefore, the Subpart X unit does not meet the monitoring requirements of 40 CFR part 75.

If source caps are used for other units at a facility subject to Subpart X, the units subject to the emissions cap must also be monitored using the 40 CFR part 75 requirements to ensure the integrity of the source emissions cap. This section of the Subpart X rule errs in not requiring such source monitoring.

The 40 CFR part 60 monitoring requirements are significantly less stringent than the monitoring requirements of 40 CFR part 75. Therefore, emission reductions generated by sources using 40 CFR part 60 monitoring techniques are assumed to be less accurate than those generated by sources using 40 CFR part 75 monitoring requirements. There is no showing that artificially reducing the emission reduction credits by 20 percent is sufficient to account for the possible inaccuracy of emission reductions determined using 40 CFR part 60 techniques.

Alternative Monitoring

The Subpart X rule allows for alternative source monitoring with the approval of the State. However, the rule provides no standards for approval of the alternative monitoring techniques, e.g., that the alternative monitoring is consistent with the purposes of the required monitoring and that any adverse effect of approving the alternative monitoring is nonexistent or negligible. In addition, exceptions from the specified monitoring requirements must be explicitly subject to the approval of the EPA as well as the State, which is not the case for the adopted rule.

Substitute Data

The Subpart X rule provides for the use of 40 CFR part 75 substitute data when the 40 CFR part 60 continuous emission monitors are out of service or not properly functioning. However, because of record keeping and reporting differences between 40 CFR part 60 and

40 CFR part 75, using 40 CFR part 75 substitute data procedures with 40 CFR part 60 monitoring and data recording is not feasible. 40 CFR part 60, unlike 40 CFR part 75, does not generally require mass emissions for every hour of operation. The data substitute procedures in 40 CFR part 75 rely heavily on the hourly data contained in the 40 CFR part 75 data report. Data cannot be substituted for missing 40 CFR part 60 data without the hourly data record that would have been generated under 40 CFR part 75, and checking the appropriate use of the substitute data procedures is impossible without such hourly data records.

Section 217.855

The Subpart X rule provides for reporting of only ozone season total emissions through an annual emissions report for source units subject to a Subpart X emissions cap. This differs from the emissions reporting requirements for sources subject to the NO_x Budget Trading Program, which are required to be covered by hourly emission reporting for the ozone season.

Sources subject to the NO_x Budget Trading Program are required to make quarterly emission reports in order to provide quality assurance of the emissions data on an on-going basis and so that monitoring problems or reporting errors are found early enough during the ozone season to be corrected before the end of the ozone season. Subpart X only requires annual reports of emissions data, and, therefore, fails to meet the reporting requirements for sources subject to the NO_x Budget Trading Program.

Section 217.860

This section fails to meet the detailed recordkeeping requirements of 40 CFR part 75. The detailed recordkeeping requirements of 40 CFR part 75 are designed to facilitate quality assurance of emissions data. The recordkeeping requirements of this section of the Subpart X rule will not provide for the emissions quality assurance required of other sources subject to the NO_x Budget Trading Program. Therefore, we find this section of the Subpart X rule to be deficient for NO_x allowance trading purposes.

Section 217.865

The rule does not define "excess emissions." Elsewhere in Illinois' NO_x budget trading rules, in Subpart B, section 211.2080, "excess emissions" is defined as any tonnage of NO_x emitted by a NO_x budget unit during a control period that exceeds the NO_x emission allowances available for compliance

deduction for the source unit and for a control period. However, a Subpart X unit does not have a requirement to hold emission allowances equal to its NO_x emissions. It is not clear whether “excess emissions” in section 217.865 means emissions in excess of the source emissions cap or in excess of the Subpart X unit’s permitted emission rate. This ambiguity makes this section of the Subpart X rule unacceptable.

G. What are our proposed actions regarding the approvability of the subject rule?

Based on the rule shortfalls and issues of concern discussed above, we propose that the Subpart X rule does not meet the requirements of 40 CFR parts 75 and 96, and cannot be approved as a revision to the Illinois SIP. We have identified the following general problems exist with the Subpart X rule: (1) The rule unacceptably would grant NO_x emission allowances for source closures; (2) the rule does not prevent shifting of production and NO_x emissions from one facility to another; (3) the rule establishes an emission baseline (from which emission reduction/NO_x emission allowances are earned through subsequent NO_x emission reductions), 1995, that is too far in the past and prior to the State’s adoption of the Subpart X rule and prior to the baseline used for other sources involved in the NO_x Budget Trading Program; (4) the rule unacceptably would allow the use of 40 CFR part 60 emissions monitoring requirements rather than 40 CFR part 75 monitoring requirements required of other sources involved in the NO_x Budget Trading Program; and, (5) the rule contains other minor deficiencies as noted above. Together, these problems lead us to propose that the Subpart X rule be disapproved as a revision to the Illinois SIP.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

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.*).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

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).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action 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.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will 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).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a “significant regulatory action” under Executive Order 12866 or a “significant regulatory action,” 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).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 15, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.
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