

energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing a mobile safety zone around a parade of vessels and is expected to have no impact on the water. This zone is designed to protect mariners from the hazards associated with vessel parades. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05-0405 to read as follows:

#### § 165.T05-0405 Safety Zone: Harborfest 2009, Parade of Sail, Elizabeth River, Norfolk, VA.

(a) *Regulated Area:* The following area is a safety zone: specified waters of the Elizabeth River 300 yards ahead of, 100 yards abeam of, and all waters between all vessels participating in the Parade of Sail, transiting from Sewell's Point, Virginia enroute to Town Point Park, Norfolk, Virginia.

(b) *Definition:* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 638-6641.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period:* This regulation will be in effect from 10 a.m. July 3, 2009 to 3 p.m. on July 5, 2009.

Dated: June 16, 2009.

**M.S. Ogle,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. E9-15191 Filed 6-25-09; 8:45 am]

BILLING CODE 4910-15-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R05-OAR-2007-1131; FRL-8921-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Illinois; Oxides of Nitrogen Regulations, Phase II

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a request submitted by the Illinois Environmental Protection Agency (Illinois EPA) on October 23, 2007, to revise the Illinois State Implementation Plan (SIP). The State has submitted revisions to 35 Illinois Administrative Code (Ill. Adm. Code) parts 211 and 217. The submitted revisions are final and adopted in the Ill. Adm. Code, and pertain to definitions and general provisions, and control of Nitrogen Oxides (NO<sub>x</sub>). The rules satisfy the requirements of EPA's NO<sub>x</sub> SIP Call Phase II Rule (the Phase II Rule). We are approving these regulations based on Illinois' demonstration that the State will meet the emissions targets set forth in the Phase II Rule through reductions from stationary internal combustion (IC) engines and turbines which are identified in the NO<sub>x</sub> plan submittal. Limiting NO<sub>x</sub> emissions from IC engines and turbines will enable the State to meet the 7,055 ton reduction requirement contained in the Phase II Rule, thereby improving air quality and protecting the health of Illinois citizens.

**DATES:** This direct final will be effective August 25, 2009, unless EPA receives adverse comments by July 27, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1131, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).
3. *Fax:* (312) 692-2551.

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

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business 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-2007-1131. 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, any form of encryption, and 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 hard

copy. Publicly available docket materials are available either electronically in <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 Andy Chang, Environmental Engineer, at (312) 886-0258 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Andy Chang, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, [chang.andy@epa.gov](mailto:chang.andy@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
- II. Who Is Affected by the New Rule and the Amended Rules?
- III. What Does Approval of This Rule Accomplish?
- IV. How Are Owners and Operators Expected To Comply With the New Requirement?
- V. What Action Is EPA Taking?
- VI. Statutory and Executive Order Reviews

**I. Background**

On October 27, 1998 (63 FR 57356), EPA issued the NO<sub>x</sub> SIP Call, which required 22 States, including Illinois, to prepare plans to reduce the transport of ozone throughout the eastern part of the United States. This was to be accomplished by reducing emissions of NO<sub>x</sub> from selected source categories, primarily major fuel burning sources, using available cost-effective measures. The rule established a cap on emissions of NO<sub>x</sub> from each State. States had flexibility in determining which fuel burning sources were to be included in their rules. For the most part, States targeted NO<sub>x</sub> reductions from electric utilities and other large industrial boilers, cement kilns, and IC engines as sources which could be controlled in a cost-effective manner. Background information in this regard is available from documents prepared by EPA, and can be found at <http://www.epa.gov/airmarkets/progsregs/nox/sip.html>.

Some States and industry challenged the rule. In *Michigan v. EPA*, 213 F.3d 663 (D.C.Cir. 2000), the U.S. Court of Appeals for the District of Columbia Circuit largely upheld EPA's rulemaking. It did, however, remand a

portion of the rule concerning IC engines to EPA for further notice and public comment.

Subsequent to the Court's decision, EPA proceeded initially with rules concerning electric generating units (EGU), industrial boilers (non-EGU), and cement kilns as Phase I sources. The IC engines fell into the Phase II group, to be addressed at a later date. Illinois adopted its Phase I rules and submitted them to EPA; EPA approved them on June 28, 2001 (66 FR 34382) and November 21, 2001 (66 FR 56454).

On April 21, 2004 (69 FR 21603), EPA issued the Phase II Rule. It required most States with Phase I budget programs to submit a Phase II plan to achieve incremental reductions not addressed by Phase I rules. The Phase II Rule also identified the additional NO<sub>x</sub> budget reductions (incremental reductions) that States would have to achieve by regulating large (greater than one ton per day emissions) IC engines. EPA calculated the amount of incremental reductions required by recalculating the overall budget to reflect a control level of 82 percent from natural gas-fired lean-burn IC engines with greater than one ton per day NO<sub>x</sub> emissions. Illinois EPA drafted revisions to the SIP (35 Ill. Adm. Code Parts 211 and 217) based on guidance from EPA dated September 19, 2004, which contained an example model rule (the Model Rule).

On April 6, 2007, Illinois EPA filed proposed amendments to 35 Ill. Adm. Code parts 211 and 217 in order to satisfy the requirements of EPA's Phase II Rule with the Illinois Office of the Clerk of the Pollution Control Board (the Board). The Board issued a First Notice Opinion and Order on April 19, 2007, and the public process started on April 20, 2007, when the Board issued a Notice of Hearings. The first hearing occurred on May 21, 2007, in Springfield, and the second on June 19, 2007, in Chicago. Most notably, the State received one set of comments from ANR Pipeline Company, Natural Gas Pipeline Company, Trunkline Gas Company, and Panhandle Eastern Pipeline Company (the Pipeline Consortium). Illinois EPA addressed the comments from the Pipeline Consortium and made changes where necessary prior to finalization of the Phase II Rule. The Second Notice Opinion and Order of the Board was issued on August 9, 2007, and the Joint Committee on Administrative Rules' Certifications of No Objections was dated September 18, 2007. On this same date, the Final Opinion and Order of the Board for the proposed rules were adopted. The Notice of Adopted Amendments was

published in the *Illinois Register*, volume 31, issue 41, pp. 14254–14295, on October 12, 2007.

In the Phase II Rule, EPA calculated the 2007 base year NO<sub>x</sub> emissions inventory from which Illinois needed additional reductions of 7,055 tons per ozone season, which in Illinois starts on April 1 and ends on October 31. EPA based the calculation upon achieving an 82 percent reduction at all IC engines in Illinois with greater than one ton per day of NO<sub>x</sub> emissions. On March 13, 2009, Illinois EPA provided a budget demonstration that showed reductions in NO<sub>x</sub> emissions for large IC engines and turbines in the State amounting to 7,055 tons per ozone season, thereby satisfying requirements of the Phase II Rule.

## II. Who Is Affected by the New Rule and the Amended Rules?

Ill. Adm. Code parts 211 and 217 apply to the entire State of Illinois, and apply to any person who owns or operates a large stationary reciprocating IC engine, turbine, or other smaller stationary IC engines.

## III. What Does Approval of This Rule Accomplish?

EPA established the incremental difference requirements for affected States, including Illinois, in the April 21, 2004, **Federal Register** (69 FR 21604). The State's budget demonstration shows that the State will be able to reduce emissions of NO<sub>x</sub> to meet the Phase II incremental difference of 7,055 tons of NO<sub>x</sub> for the ozone season.

Approval of the State's rules ensures the Federal enforceability of NO<sub>x</sub> emissions reductions. The State's rules affect NO<sub>x</sub> SIP Call IC engines, turbines, and any other stationary IC engine subject to NO<sub>x</sub> control in the State's rules. The emission reductions for some large engines will be permanent and year-round resulting from low emission combustion measures retrofitted to existing engines. Low emission combustion measures cannot be cycled off once the changes are made to the engine. The combustion control technology is a permanent, physical change to the design and operation of the engine which, when implemented, is expected to reduce emissions of NO<sub>x</sub> year-round. The State's rules include provisions which the source must follow to demonstrate compliance with the rules. EPA expects environmental and health benefits to be permanent.

## IV. How Are Owners and Operators Expected To Comply With the New Requirement?

Illinois Adm. Code part 217.392 includes a requirement that an owner or operator of a large IC engine or turbine shall not operate an affected engine during the ozone season, unless there is a compliance plan which meets the requirements of the rule. The rule prohibits operation of affected engines after January 1, 2008, except in compliance with the requirements. Included in the compliance plan is a requirement that the projected NO<sub>x</sub> emissions from the engine be included in a Federally enforceable permit. This information will enable the State to determine if reductions from the covered sources should meet the Phase II budget increment. The failure of a source to meet the required NO<sub>x</sub> reductions is a violation of the provisions of the permit. The State of Illinois is expected to enforce non-compliance with its rules by reviewing monitoring and testing information submitted by the owners and operators of the affected engines and turbines.

## V. What Action Is EPA Taking?

EPA is approving revisions to Ill. Adm. Code parts 211 and 217 for incorporation into the Illinois SIP. The revisions were submitted by Illinois EPA and the rules pertain to definitions and general provisions, and control of Nitrogen Oxides, respectively, and include: 211.740 (Brakehorsepower); 211.1740 (Diesel Engine); 211.1920 (Emergency or Standby Unit); 211.3300 (Lean-burn Engine); 211.5640 (Rich-burn Engine); 217.101 (Measurement Methods); 217.102 (Abbreviations and Units); 217.104 (Incorporation by Reference); 217.386 (Applicability); 217.388 (Control and Maintenance Requirements); 217.390 (Emissions Averaging Plan); 217.392 (Compliance); 217.394 (Testing and Monitoring); 217.396 (Recordkeeping and Reporting); and section 217 appendix G. EPA is taking this action because we have determined that the rule satisfies the requirements of the Clean Air Act and the NO<sub>x</sub> SIP Call Phase II Rule. The State has shown, through its budget demonstration, that it can achieve the Phase II budget increment through source compliance with the State's rules affecting IC engines and turbines in conjunction with the State's permitting program. Meeting the Phase II budget increment and the Phase I increment means the State will meet its total overall ozone season NO<sub>x</sub> budget and bring about reductions in ozone

concentrations in the State and downwind from Illinois.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments, as Illinois drafted the SIP revisions based on the Model Rule. However, in the Proposed Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective August 25, 2009 without further notice unless we receive relevant adverse written comments by July 27, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period; therefore, any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective August 25, 2009.

## VI. 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 Clean Air Act. 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 Clean Air Act; 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 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 August 25, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 11, 2009.

**Walter W. Kovalick Jr.**,

*Acting Regional Administrator, Region 5.*

■ 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 O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(184) to read as follows:

##### § 52.720 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(184) On October 23, 2007, the Illinois Environmental Protection Agency submitted revisions to its State implementation plan for the Oxides of Nitrogen (NO<sub>x</sub>) SIP Call Phase II. The State has submitted revisions to 35 Illinois Administrative Code (Ill. Adm. Code) Parts 211 and 217. The rules pertain to definitions and general provisions, and control of Nitrogen Oxides (NO<sub>x</sub>), respectively. The rules satisfy the requirements of EPA's NO<sub>x</sub> SIP Call Phase II Rule (the Phase II Rule).

(i) *Incorporation by reference.* (A) Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for

Stationary Sources, Part 211: Definitions and General Provisions, Subpart B: Definitions, Sections: 211.740 Brakehorsepower; 211.1740 Diesel Engine; 211.1920 Emergency or Standby Unit; 211.3300 Lean-burn Engine; and 211.5640 Rich-burn Engine; effective September 25, 2007. (B) Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 217: Nitrogen Dioxide Emissions, Subpart A: General Provisions, Sections: 217.101 Measurement Methods; 217.102 Abbreviation and Units; Subpart Q: Stationary Reciprocating Internal Combustion Engines and Turbines, Sections 217.386 Applicability; 217.388 Control and Maintenance Requirements; 217.390 Emissions Averaging Plan; 217.392 Compliance; 217.394 Testing and Monitoring; 217.396 Recordkeeping and Reporting; and 217 Appendix G: Existing Reciprocating Internal Combustion Engines Affected by the NO<sub>x</sub> SIP Call; *effective September 25, 2007.*

(ii) *Additional material.* Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 217: Nitrogen Dioxide Emissions, Subpart A: General Provisions, Section 217.104 Incorporation by Reference; effective September 25, 2007.

[FR Doc. E9-14855 Filed 6-25-09; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 58

#### Ambient Air Quality Surveillance

##### CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 53 to 59, revised as of July 1, 2008, on page 271, in appendix G to part 58, Table 2 is corrected to read as follows:

#### Appendix G to Part 58—Uniform Air Quality Index (AQI) and Daily Reporting

\* \* \* \* \*