

ILLINOIS POLLUTION CONTROL BOARD
April 6, 2023

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R 23-18
PARTS 201, 202, AND 212) (Rulemaking – Air)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by M. Gibson):

The Board today proceeds to second notice with rules amending the Board air regulations. The rules were proposed on December 7, 2022, by the Illinois Environmental Protection Agency (IEPA) to amend Parts 201, 202, and 212 of the Board’s air pollution regulations. *See* 35 Ill. Adm. Code 201, 202, 212. IEPA filed the proposal under the “fast-track” procedures of Section 28.5 of the Act. *See* 415 ILCS 5/28.5 (2020). Section 28.5 requires the Board to proceed toward adoption of the proposed rules by meeting a series of specific deadlines.

IEPA proposed to remove provisions that allow it to give advance permission to facilities to continue operating during a malfunction or to violate emission standards during start-up. IEPA asserts that its proposal implements changes identified by USEPA as necessary to comply with the Clean Air Act (CAA). If the Board adopts rules, IEPA intends to submit them to USEPA as a State Implementation Plan (SIP) revision. IEPA also asserts that its proposal includes changes necessary for USEPA to approve a revised SIP.

In the following sections of this opinion, the Board first reviews the procedural history, background on “fast-track” proceedings under Section 28.5 of the Act, and the regulatory background of IEPA’s proposal. The Board then summarizes its second-notice proposal section-by-section before addressing its technical feasibility and economic reasonableness. Additionally, based on testimony and comment from participants, the Board opens a sub-docket to explore alternate emissions standards. The Board seeks proposed rules to consider. The Board then reaches its conclusion to submit proposed rules to JCAR and issues its order.

PROCEDURAL HISTORY

On December 7, 2022, IEPA filed a rulemaking proposal under the “fast-track” procedures of Section 28.5 of the Act (415 ILCS 5/28.5 (2020)). The proposal included IEPA’s Statement of Reasons (SR); its proposed revisions to Parts 201, 202, and 212 (Prop. 201, 202, and 212, respectively); and a motion for waiver of requirements to submit copies of specified documents.

On December 12, 2022, the Board received comments and objections from C23D32, which describes itself as “a private and anonymous investigative watchdog group” monitoring IEPA action. The Board docketed it as Public Comment 1 (PC 1).

In an order on December 15, 2022, the Board accepted the proposal for hearing without commenting on its substantive merits, granted IEPA's motion to waive specified copy requirements, and submitted the proposal to first-notice publication in the *Illinois Register*. See 46 Ill. Reg. 20627, 20638, 20644 (Dec. 30, 2022).

On December 16, 2022, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of IEPA's proposal by January 27, 2023. See 415 ILCS 5/27(b) (2020). The Board did not receive a response to its request.

Also on December 16, 2022, the Board's hearing officer issued a Notice of Hearing and Order scheduling three hearings.

On December 30, 2022, the Board received comments from the Illinois Environmental Regulatory Group (IERG), docketed as Public Comment 2 (PC 2). On January 5, 2023, the Board received comments from the Illinois Manufacturers' Association (IMA), docketed as Public Comment 3 (PC 3).

On January 9, 2023, IEPA pre-filed the testimony of Rory Davis (IEPA Test.), Manager of the Regulatory Development Unit in the Air Quality Planning Section of IEPA's Bureau of Air.

On January 12, 2023, the Board received pre-filed questions for IEPA's witness from the Illinois Environmental Regulatory Group (IERG Questions.1).

On January 17, 2023, the Board received comments from JCAR, docketed as Public Comment 4 (PC 4).

On January 18, 2023, the Board received pre-filed questions for IEPA's witness from Dynegy Midwest Generation, LLC; Electric Energy, Inc.; Illinois Power Generating Company, Illinois Power Resources Generating, LLC; and Kincaid Generation, LLC (collectively, Dynegy) (Dynegy Questions). Also on January 18, 2023, a Board hearing officer order submitted questions to IEPA's witness (Board Questions.1). Additionally, the Board received comments from the Chemical Industry Council of Illinois (CICI) on January 18, 2023, docketed as Public Comment 5 (PC 5).

The Board held the first hearing as scheduled on January 19, 2023, and received the transcript (Tr.1) on January 25, 2023.

On January 20, 2023, a Board hearing officer order set the schedule regarding outstanding requests to IEPA and follow up questions and answers. On January 30, 2023, IEPA filed responses to questions directed to it at the first hearing (IEPA Resps.1).

On January 27, 2023, the Board received comments from the Citizens Against Ruining the Environment (CARE), docketed as Public Comment 6 (PC 6). On February 2, 2023, the

Board received comments from the Glass Packaging Institute, docketed as Public Comment 7 (PC 7).

On February 6, 2023, the Board received pre-filed testimony from five participants: Dynegy pre-filed the testimony of Cynthia Vodopivec (Dynegy Test.), the American Petroleum Institute (API) pre-filed the testimony of John Derek Reese (API Test.), IERG pre-filed testimony of Kelly Thompson and David R. Wall (IERG Test.), Midwest Generation (MWG) pre-filed testimony of Sharene Shealey (MWG Test.), and CICI pre-filed testimony Lisa Frede (CICI Test.). Also on February 6, 2023, IERG filed follow-up questions to IEPA's responses directed to it at the first hearing (IERG Questions.2).

On February 14, 2023, a Board hearing officer order submitted questions to participant witnesses (Board Questions.2). Also on February 14, 2023, IEPA filed its response to IERG's follow-up questions (IEPA Resps.2). Additionally, the Board received comments from the Sierra Club on February 14, 2023, docketed as Public Comment 8 (PC 8).

On February 15, 2023, the Board received pre-filed questions from the Illinois Attorney General's Office (AG) (AG Questions) based on testimony pre-filed by participants for the second hearing.

The Board held the second hearing as scheduled on February 16, 2023, and received the transcript (Tr.2) on February 21, 2023. Also on February 21, 2023, a Board hearing officer order cancelled the third hearing at the request of IEPA, set the deadline of February 24, 2023 for responses to outstanding requests for information, and set the public comment period deadline as March 7, 2023.

On February 24, 2023, the Board received responses for outstanding requests for information from IERG (IERG Resps.) and CICI (CICI Resps.). On March 1, 2023, the Board received responses for outstanding requests for information from Dynegy (Dynegy Resps.) and MWG (MWG Resps.1). On March 7, 2023, the Board received a supplemental response from MWG (MWG Resps.2).

On March 2, 2023, the Board received comments from the Illinois Association of Aggregate Producers (IAAP), docketed as Public Comment 9 (PC 9). On March 6, 2023, the Board received comments from C23D32, docketed as Public Comment 10 (PC 10).

On March 7, 2023, the Board received post-hearing comments from the following participants: IEPA (PC 11); API (PC 12); IERG (PC 13); Dynegy and MWG (PC 14); and the AG (PC 15).

BACKGROUND ON "FAST-TRACK" RULEMAKING

Under Section 28.5(c) of the Act, when the CAA Amendments of 1990 require rules "other than identical in substance rules to be adopted, upon request by the Agency, the Board must adopt rules under fast-track rulemaking requirements." 415 ILCS 5/28.5(c) (2020); SR at 12. For the purposes of those requirements, "'requires to be adopted' refers only to those

regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules.” 415 ILCS 5/28.5(b); SR at 12.

IEPA asserts that its proposal meets the requirements of Section 28.5. SR at 12. IEPA first argues that the proposal is not identical in substance to any federal regulations. *Id.*; see 415 ILCS 5/7.2 (2020) (identical in substance rulemaking). IEPA states that its proposal aligns with an option in SSM (startup, shutdown, or malfunction) SIP Call for correcting SIP deficiencies. SR at 12. Second, IEPA argues that its proposal is required to be adopted. It stresses that “USEPA has issued a Finding of Failure to Submit SIP Revisions, which became effective on February 11, 2022.” SR at 12-13; see 87 Fed. Reg. 1680 (Jan. 12, 2022). IEPA states that, to avoid mandatory sanctions, it must submit amended rules to USEPA as a SIP revision, and USEPA must determine that the submission is complete. SR at 13.

Several participants objected to IEPA’s use of fast-track rulemaking for its proposal. However, these participants did not argue that IEPA’s proposal was not appropriate for fast-track rulemaking; they merely did not like the sped-up rulemaking timeframe and shorter pre-filing outreach. In fact, IERG’s witness, Kelly Thompson, acknowledged in her pre-filed testimony that “IERG is aware of and sensitive to the threat of sanction associated with a Finding of Failure by USEPA.” IERG Test. at 15. Therefore, the Board finds IEPA’s use of fast-track rulemaking is appropriate in this case.

REGULATORY BACKGROUND

SSM Generally

USEPA defines “SSM” as “startup, shutdown, or malfunction at a source. It does not include periods of maintenance at such a source.” 78 Fed. Reg. 12463 (Feb. 22, 2013). “Startup” generally means “the setting in operation of a source for any reason.” *Id.* “Shutdown” generally means “the cessation of operation of a source for any reason.” *Id.* “The term ‘malfunction’ means a sudden and unavoidable breakdown of process or control equipment.” *Id.*

An SSM event is a “period of startup, shutdown, or malfunction during which there are exceedances of the applicable emission limitations and thus excess emissions.” USEPA has defined “excess emissions” as “the emissions of air pollutants from a source that exceed any applicable SIP emission limitations.” *Id.*

In 2013, USEPA considered how rules in approved SIPs treat startup, shutdown, or malfunction. USEPA noted that it had approved many of these rules soon after the 1970 amendments to the CAA, “which for the first time provided for the system of clean air plans that were to be prepared by air agencies” for USEPA to approve. 78 Fed. Reg. 12463 (Feb. 22, 2013). USEPA stated that, “[a]t that time, it was widely believed that emission limitations set at levels representing good control of emissions during normal operations could in some case not be met with the same emission control strategies during periods of startup, shutdown, maintenance, or malfunction.” *Id.* USEPA explained that state plans commonly included “special, more lenient treatment of excess emissions during such periods. Many of these

provisions took the form of absolute or conditional statements that excess emissions from a source, when they occur outside of the source's normal operations, were not to be considered violations of the air agency rules, *i.e.*, exemptions.” *Id.*

Original SIPs approved in 1971 and 1972 often included excess emissions provisions for SSM. 78 Fed. Reg. 12464 (Feb. 22, 2013). USEPA states that, in the early 1970s, it “was inundated with proposed SIPs and had limited experience in processing them.” *Id.* Consequently, “not enough attention was given to the adequacy, enforceability, and consistency of these provisions.” *Id.* USEPA “realized that such provisions allow opportunities for sources to repeatedly emit pollutants during such periods in quantities that could cause unacceptable air pollution in nearby communities with no legal pathways for air agencies, the [US]EPA, or the courts to require the source to make reasonable efforts to reduce these emissions.” *Id.* Beginning in 1977, USEPA notified states that exemptions for excess emissions during SSM events were not consistent with certain CAA provisions. *Id.*

Although SSM provisions vary, they generally address circumstances in which it is difficult to meet emission limitations during periods of startup, shutdown, or malfunction. SR at 3. USEPA has categorized the provisions as either “an automatic exemption, a statement regarding exercise of enforcement discretion by the air agency or an affirmative defense.” 80 Fed. Reg. 33844 (June 12, 2015). USEPA defines an automatic exemption as “a generally applicable provision in a SIP that would provide that if certain conditions existed during a period of excess emissions, then those exceedances would not be considered violations of the applicable emission limitations.” *Id.* at 33842. A director's discretion provision generally means “a regulatory provision that authorizes a state regulatory official unilaterally to grant exemptions or variances from otherwise applicable emission limitations or control measures, or to excuse noncompliance with otherwise applicable emission limitations or control measures, which would be binding on the [USEPA] and the public.” *Id.* In the context of an enforcement proceeding, an affirmative defense is:

a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. The term affirmative defense provision means more specifically a state law provision in a SIP that specifies particular criteria or preconditions that, if met, would purport to preclude a court from imposing monetary penalties or other forms of relief for violations of SIP requirements in accordance with CAA section 113 or CAA section 304. *Id.*

Illinois' SSM Provisions

Part 201 of the Board's air pollution rules includes Subpart I entitled “Malfunctions, Breakdowns, or Startups.” 35 Ill. Adm. Code 201.261-201.265. IEPA asserts that these “SSM provisions do not change the substantive emission standard otherwise applicable to sources.” SR at 14. IEPA “has historically interpreted these provisions as establishing an affirmative defense should excess emissions result in an enforcement action.” SR at 5. They allow “the opportunity to make a claim of malfunction/breakdown or startup, with the viability of such claim subject to

specific review against the requisite requirements.” *Id.* at 5-6, citing 78 Fed. Reg. 12460, 12514 (Mar. 15, 2011). IEPA “still considers excess emissions during SSM to be violations, and the advance permission granted in the operating permit under Part 201 simply allows a source to assert a *prima facie* defense should those violations be the subject of an enforcement proceeding.” SR at 5-6, 14. IEPA asserts that it “does not interpret or implement the regulations to provide any type of exemption from applicable limitations.” SR at 6.

SSM SIP Call

On June 12, 2015, USEPA took final action on a petition for rulemaking filed by the Sierra Club on June 30, 2011. The petition concerned how SIPs treat excess emissions during periods of SSM. 80 Fed. Reg. 33843 (June 12, 2015).

USEPA determined that SIPs containing automatic exemptions, director’s discretion exemptions, or affirmative defenses to otherwise applicable limitations during SSM are not permissible under the CAA. SR at 6, citing 80 Fed. Reg. at 33840, 33844. USEPA emphasized that “emission limitations in SIP provisions cannot contain exemptions for emissions during SSM events.” SR at 6, citing 80 Fed. Reg. at 33889.

USEPA determined that 35 Ill. Adm. Code 201.261, 201.262, and 201.265 are “substantially inadequate to meet CAA requirements.” 80 Fed. Reg. at 33965-66. IEPA had stated that these rules “can be read to create exemptions by authorizing a state official to determine in the permitting process that the excess emissions during startup and malfunction will not be considered violations of the applicable emission limitations.” SR at 7, citing 78 Fed. Reg. at 12514. Even if these provisions are considered to provide only an affirmative defense in an enforcement proceeding, USEPA explained that they are deficient. SR at 7. USEPA stated that

the enforcement structure of the CAA, embodied in section 113 and section 304, precludes any affirmative defense provisions that would operate to limit a court’s jurisdiction or discretion to determine the appropriate remedy in an enforcement action. These provisions are not appropriate under the CAA, no matter what type of event they apply to, what criteria they contain or what forms of remedy they purport to limit or eliminate. *Id.*, citing 80 Fed. Reg. at 33851.

In its 2013 proposed SIP Call, USEPA discounted Illinois’ position that its SSM provisions provide only “a *prima facie* defense in an enforcement proceeding.” 78 Fed. Reg. at 12515. It concluded that these provisions were not consistent with USEPA recommendations interpreting the CAA for a number of reasons:

it is not clear that the defense applies only to monetary penalties, which is inconsistent with requirements of CAA sections 113 and 304; the defense applies to violations that occurred during startup periods, which is inconsistent with CAA sections 113 and 304; the provisions shift the burden of proof to the enforcing party; and finally, the provisions do not include sufficient criteria to assure that sources seeking to raise the affirmative defense have in fact been properly

designed, maintained, and operated, and to assure that sources have taken all appropriate steps to minimize excess emissions. 78 Fed. Reg. at 12515.

Having found Illinois' provisions inconsistent with the CAA, USEPA granted Sierra Club's petition and issued a SIP Call with respect to them. SR at 7, citing 80 Fed. Reg. at 33966.

The SSM SIP call provides approaches consistent with the CAA that states may take to address emissions during SSM events: removing the provisions from a SIP, criteria and procedures for agency personnel to exercise enforcement discretion, or "alternative numerical limitations or other technological control requirements or work practice requirements during startup and shutdown events. SR at 7, citing 80 Fed. Reg. 33844.

USEPA set a deadline of November 22, 2016, for affected states to respond to the SIP Call. SR at 7, citing 80 Fed. Reg. at 33848. IEPA states that the CAA provides USEPA six months to review SIP submissions to determine whether they are complete for the required criteria. SR at 7-8, citing 42 USC § 7410 (k)(1)(B). USEPA must issue a finding of failure if a state does not respond to the call or if its submission is incomplete. SR at 8, citing 42 USC § 7410(k)(5).

IEPA reports that on July 27, 2015, "[s]everal states sought judicial review of the SSM SIP Call." SR at 8 (citations omitted). IEPA adds that, in 2017, the court "granted USEPA's petition to hold the case in abeyance to allow USEPA time to reassess the SSM SIP Call following a change in presidential administration." SR at 8, citing Environ. Comm. Fl. Elec. Power v. EPA, No. 15-1239 (D.C. Cir. Apr. 24, 2017). IEPA states that, based on these factors, "it did not move forward with rulemaking at that time. It opted to wait and see what USEPA ultimately concluded before acting to respond to the 2015 SSM SIP Call." SR at 8.

USEPA Action

IEPA reports that activity on SSM at the federal level continued in abeyance until 2020, when USEPA Regions 4, 6, and 7 took final action to withdraw the SIP Call for Texas, North Carolina, and Iowa, respectively. SR at 8, citing 87 Fed. Reg. 1681 (Jan. 12, 2022). "These state-specific actions are the subject of pending litigation." 87 Fed. Reg. at 1681 (citations omitted).

IEPA further reports that USEPA in 2020 issued a memorandum establishing "a new national policy that permitted the inclusion of certain provisions governing SSM periods in SIPs, including those related to exemptions and affirmative defenses." SR at 8, citing 87 Fed. Reg. at 1681; USEPA, *Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementations Plans* (Oct. 9, 2020) (2020 Memorandum). IEPA argues that the 2020 Memorandum "did not take any regulatory action to withdraw or change the SSM SIP Call." SR at 9. However, it stated an intention to "review the remaining SIP calls that were issued in the 2015 SSM SIP Action to determine whether the [US]EPA should maintain, modify, or withdraw particular SIP calls through future agency action." 87 Fed. Reg. at 1681. IEPA argues that, with a change in presidential administrations in 2021, USEPA did not undertake this review. SR at 9.

IEPA reports that USEPA in 2021 issued a memorandum withdrawing the 2020 memorandum. SR at 9, citing *Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy* (Sept. 30, 2021) (2021 Memorandum). IEPA argues that “[t]he 2021 Memorandum reinstated the 2015 SSM SIP Call and reiterated USEPA’s view that exemption provisions and affirmative defense provisions in SIPs are generally inconsistent with the CAA.” SR at 9. IEPA emphasized that “the statement in the 2021 Memorandum regarding the [US]EPA’s plans to review and potentially modify or withdraw particular SIP calls by the end of 2023 no longer reflects the [US]EPA’s intent. . . . [T]hose SIP calls remain in effect.” 2021 Memorandum at 5.

USEPA Finding of Failure

On January 12, 2022, USEPA published a Finding of Failure to Submit SIP Revisions. 87 Fed. Reg. 1680 (Jan. 12, 2022). USEPA determined that 12 states including Illinois had failed to timely address the 2015 finding of substantial inadequacy and the SIP Call for provisions addressing excess emissions during SSM. *Id.* This finding took effect on February 11, 2022. *Id.*

IEPA states that the CAA provides states 18 months to cure the finding of failure. SR at 10, 14, citing 42 USC § 7509(a). If IEPA fails to submit the required SIP revisions by that deadline, IEPA asserts that “USEPA must impose sanctions,” which may include “the loss of highway funds or an increase in the emission offset ratio for New Source Review.” SR at 10, citing 42 USC § 7509(b)(1, 2). IEPA adds that, “[i]f USEPA finds a lack of good faith in a state’s failure to correct the SIP deficiency, USEPA must apply both sanctions until the state comes into compliance.” SR at 10, citing 42 USC § 7509(a). Even without a lack of good faith, USEPA will impose both sanctions “[i]f the Administrator has selected one of such sanctions and the deficiency has not been corrected within 6 months thereafter.” *Id.* In addition, if a state does not submit an adequate SIP, then “USEPA has the obligation to implement a Federal Implementation Plan pursuant to Section 110(c)(1) of the CAA within 24 months of the Finding.” SR at 10, citing 42 USC § 7410(c)(1).

IEPA Communications

IEPA states that, after the 2015 SIP Call, it sought advice from USEPA on options identified in the SIP Call, including alternative emissions standards during startup and malfunction. SR at 10. IEPA asserts that “[n]o clear guidance was provided at that time.” *Id.* IEPA adds that it again sought this guidance after the 2021 Memorandum. *Id.* “USEPA advised that no formal guidance was forthcoming, at least at that time, and that it could make no guarantees as to the approvability of alternative emission standards.” *Id.* at 11. USEPA’s Region 5 responded that, “while it would consider and assess any path chosen by a state, the only path that is definitely approvable is removal of the offending SSM provisions.” *Id.* IEPA reports that USEPA considers that option “the most straightforward way to comply with the SSM SIP Call” and that it did not know whether the other two options would be approvable. SR at 11-12.

IEPA reports that “USEPA has issued final rules for 13 states, or portions of states, named in the SSM SIP Call,” each of which “approved the removal of the SSM provisions that

were identified in the SIP Call.” SR at 11, n.1 (citations omitted). IEPA adds that USEPA has also proposed rules for three states approving removal of these provisions. *Id.* USEPA has also proposed to disapprove a SIP submission that “would allow sources to comply with certain work practice standards instead of emissions limitations during periods of SSM and would describe requirements for minimizing excess emissions during periods of SSM. *Id.*, citing 87 Fed. Reg. 72941 (Nov. 28, 2022).

IEPA states that it communicated about its proposal with entities including environmental organizations, industry, and USEPA. SR at 16. IEPA reports that it received comments requesting additional time to review its draft proposal. *Id.* IEPA states that it could not accommodate these requests “due to the deadline to respond to the SIP Call.” *Id.* IEPA refers to comments that question removing the SSM provisions and states that these “can be explored further in the rulemaking process.” *Id.*

IEPA’s Expected SIP Submission

If the Board adopts proposed rules, IEPA intends to submit them to USEPA for approval as a SIP revision. SR at 13. IEPA states that, when it submits SIP revisions, it will not submit a CAA Section 110(l) anti-backsliding demonstration. *Id.* USEPA advised IEPA “that removing the SSM provisions from the SIP is a SIP-strengthening action, and therefore there are no anti-backsliding considerations to analyze.” *Id.*

SUMMARY OF BOARD’S SECOND-NOTICE PROPOSAL AND DISPUTED ISSUES

IEPA’s proposal intended to remove the SSM provisions in the Board’s air pollution rules in order to comply with USEPA’s SIP Call and Finding of Failure to Submit a SIP Revision. SR at 14. IEPA argues that its proposal simply eliminates a source’s ability to seek advance permission to continue operating during malfunction events or to exceed emission standards during startup events. *Id.* Sources would no longer be able to request this permission in a permit application, and IEPA could no longer grant it. *Id.* Without this permission, a source could no longer assert a *prima facie* defense to excess emissions during malfunction or startup events in an enforcement action. *Id.*

Part 201: Permits and General Provisions

Section 201.149: Operation During Malfunction, Breakdown, or Startups

Section 201.149 of the Board’s air pollution rules provides in its entirety that:

[n]o person shall cause or allow the continued operation of an emission source during malfunction or breakdown of the emission source or related air pollution control equipment if such operation would cause a violation of the standards or limitations set forth in Subchapter c of this Chapter unless the current operating permit granted by the Agency provides for operation during a malfunction or breakdown. No person shall cause or allow violation of the standards or

limitations set forth in that Subchapter during startup unless the current operating permit granted by the Agency provides for violation of such standards or limitations during startup. 35 Ill. Adm. Code 201.149.

IEPA's proposal removed "references to advance permission to continue operation during a malfunction or to violate emission limitations during startup." SR at 17. It also stated that violating applicable standards or limitations "is allowed only as specifically provided by the standard or limitation." *Id.* IEPA proposed the following revisions to this section:

No person shall cause or allow the continued operation of an emission source during malfunction or breakdown of the emission source or related air pollution control equipment if such operation would cause a violation of the applicable standards or limitations set forth in Subchapter c of this Chapter except as specifically provided for by such standard or limitation ~~unless the current operating permit granted by the Agency provides for operation during a malfunction or breakdown.~~ No person shall cause or allow violation of the applicable standards or limitations set forth in that Subchapter during startup except as specifically provided for by such standard or limitation ~~unless the current operating permit granted by the Agency provides for violation of such standards or limitations during startup.~~ Prop. 201 at 4.

In this section, JCAR suggested one change to the Board's first-notice proposal. *See* PC 4. JCAR suggested this non-substantive change to simplify language. IEPA indicated that the change is acceptable (*see* Tr.1 at 181), and the Board includes this revision in its second-notice proposal.

The Board proposed a small number of additional revisions to clarify or simplify this section, each of which is intended to be non-substantive. Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, R 23-18, slip op. at 3-21 (Dec. 15, 2022); *see* 46 Ill. Reg. 20627, 20638, 20644 (December 30, 2022). The Board asked IEPA to comment on whether the non-substantive changes proposed by the Board in the first-notice proposal and its pre-filed questions for the first hearing are acceptable to IEPA. Board Questions.1 at 2; *see* Tr.1 at 186. IEPA responded that it "has no objection to those changes," (Tr. at 186) and the Board includes these revisions in its second-notice proposal.

IERG asked IEPA to "explain what the addition of 'except as specifically provided for by such standard or limitation' means in both sentences of the proposed amendments to Section 201.149." IERG Questions at 10; *see* Tr.1 at 127. IEPA responded that it "would refer to any explicit exceptions that are established by the board [sic] when it adopts a standard or limitation." Tr.1 at 127. IERG asked as a follow-up whether "that would include if an alternative limit – or alternative emission limit were to be adopted by the board [sic]." *Id.* IEPA responded in the affirmative. *Id.*

IERG also asked IEPA if "the General Conditions in existing operating permits contain a provision based on Section 201.149." IERG Questions at 10; *see* Tr.1 at 127. IEPA responded that Clean Air Act Permit Program (CAAPP) permits do not, but lifetime operating permits and

Federally Enforceable State Operating Permits (FESOPs) do in Standard Condition 9. Tr.1 at 127-128.

Additionally, IERG asked IEPA whether “a provision based on Section 201.149 [will] be included in the General Conditions for operating permits issued after this rulemaking” if the Board adopts IEPA’s proposal. IERG Questions at 10; *see* Tr.1 at 129-130. If so, IERG asked IEPA how “the applicability of the Section 201.149 provision after this rulemaking [will] be different than how it has been applied previously.” *Id.* IEPA responded that Section 201.149 previously applied “unless a source’s operating permit contained certain SMB provisions” and, if the Board adopts its proposal, “Section 201.149 will apply unless the applicable emission limitation adopted by the board [sic] contains an applicable exemption.” Tr.1 at 130.

Section 201.157: Contents of Application for Operating Permit

Section 201.157 of the Board’s air pollution rules provides in its entirety that:

[a]n application for an operating permit shall contain, as a minimum, the data and information specified in Section 201.152. Each application shall list all individual emission units and air pollution equipment for which a permit is sought. Any applicant may seek to obtain from the Agency a permit for each emission unit, or such emission units as are similar in design or principle of operation or function, or for all emission units encompassed in an identifiable operating unit, unless subject to the provisions of Section 201.169 of this Subpart or required to obtain an operating permit with federal enforceable conditions pursuant to Section 39.5 of the Act. To the extent that the above specified data and information has previously been submitted to the Agency pursuant to this Subpart, the data and information need not be resubmitted; provided, however, that the applicant must certify that the data and information previously submitted remains true, correct and current. An application for an operating permit shall contain a description of the startup procedure for each emission unit, the duration and frequency of startups, the types and quantities of emissions during startup, and the applicant's efforts to minimize any such startup emissions, duration of individual startups, and frequency of startups. If applicable, pursuant to the requirements of Subpart I of this Part, an application for a permit shall contain a description of the startup procedure for each emission unit, the duration and frequency of startups and quantities of emissions during startup in excess of emissions during operations, and the applicant's efforts to minimize any such startup emissions. The Agency may adopt procedures that require data and information in addition to and in amplification of the matters specified in the first sentence of this Section, that are reasonably designed to determine compliance with this Chapter and ambient air quality standards, and that set forth the format by which all data and information shall be submitted. 35 Ill. Adm. Code 201.157.

IEPA specified that “the application for an operating permit contain information regarding startup when emissions of an emissions unit would be higher during startup than during normal operations of the emission unit.” SR at 17. IEPA also removed a reference to

Subpart I, “Malfunctions, Breakdowns, or Startups.” *Id.*; *see* 35 Ill. Adm. Code 201.261-201.265; Prop. 210 at 5-7 (proposing repeal of Subpart). IEPA proposed the following revisions to this section:

[a]n application for an operating permit shall contain, as a minimum, the data and information specified in Section 201.152. Each application shall list all individual emission units and air pollution equipment for which a permit is sought. Any applicant may seek to obtain from the Agency a permit for each emission unit, or such emission units as are similar in design or principle of operation or function, or for all emission units encompassed in an identifiable operating unit, unless subject to the provisions of Section 201.169 of this Subpart or required to obtain an operating permit with federal enforceable conditions pursuant to Section 39.5 of the Act. To the extent that the above specified data and information has previously been submitted to the Agency pursuant to this Subpart, the data and information need not be resubmitted; provided, however, that the applicant must certify that the data and information previously submitted remains true, correct and current. If emissions of an emission unit during startup would be higher than during normal operation of the emission unit, an~~An~~ application for an operating permit shall contain a description of the startup procedure for each emission unit, the duration and frequency of startups, the types and quantities of emissions during startup, and the applicant's efforts to minimize any such startup emissions, duration of individual startups, and frequency of startups. ~~If applicable, pursuant to the requirements of Subpart I of this Part, an application for a permit shall contain a description of the startup procedure for each emission unit, the duration and frequency of startups and quantities of emissions during startup in excess of emissions during operations, and the applicant's efforts to minimize any such startup emissions.~~The Agency may adopt procedures that require data and information in addition to and in amplification of the matters specified in the first sentence of this Section, that are reasonably designed to determine compliance with this Chapter and ambient air quality standards, and that set forth the format by which all data and information shall be submitted. Prop. 201 at 4-5.

In this section, JCAR suggested one change to the Board’s first-notice proposal. *See* PC 4. In this case, JCAR suggested this non-substantive change to simplify language. IEPA indicated that the change is acceptable (*see* Tr.1 at 181), and the Board includes this revision in its second-notice proposal.

The Board proposed a small number of additional revisions to clarify or simplify this section, each of which is intended to be non-substantive. Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, R 23-18, slip op. at 3-21 (Dec. 15, 2022); *see* 46 Ill. Reg. 20627, 20638, 20644 (December 30, 2022). The Board asked IEPA to comment on whether the non-substantive changes proposed by the Board in the first-notice proposal and its pre-filed questions for the first hearing are acceptable to IEPA. Board Questions.1 at 2; *see* Tr.1 at 186. IEPA responded that it “has no objection to those changes,” (Tr. at 186) and the Board includes these revisions in its second-notice proposal.

The Board also asked IEPA to comment on whether IEPA “has adopted procedures to implement” this section and, if so, whether IEPA plans to “revise the existing procedures to address changes proposed in this rulemaking.” Board Questions.1 at 2; *see* Tr. 1 at 179-180. If IEPA has not adopted procedures to implement this section, the Board asked IEPA to comment on whether “this allowance for the Agency to adopt procedures to implement Section 201.157 must be deleted.” *Id.* IEPA responded that it “has not adopted procedures to implement this provision, but feel that the section should not be repealed as it may be useful in the future.” Tr.1 at 180. The Board concludes to not repeal this section and does not include that in its second-notice proposal.

IERG asked IEPA if its permit section was involved in developing the proposed revisions to this Section. IERG Questions at 10; *see* Tr.1 at 130. IEPA responded that “the Bureau of Air’s permit section was not directly involved in the drafting of the proposed revisions.” Tr.1 at 130.

IERG asked IEPA which metric is used when deciding “if emissions during startup are higher than emissions during normal operations (e.g., lb/hr, ppm, lb/btu heat input, etc.)” (IERG Questions at 10; *see* Tr.1 at 131) and if applicants are required to address startups in the operating permit application “if emissions during startup are higher than during normal operations but do not exceed the numerical emission standard.” IERG Questions at 11; *see* Tr.1 at 131. IEPA responded that it is proposing to remove the following conditional clause: “if emissions of an emission unit during startup would be higher than during normal operation of the emission unit.” Tr.1 at 131. As a follow-up, IERG asked IEPA how it will utilize emissions information for startups that is required by Section 201.157. *Id.* at 132-133. IEPA responded that the startup information is relevant when “establishing the overall emissions profile, and is also useful in assessing air quality and other permitting-related considerations.” *Id.* at 133. The Board includes IEPA’s revision in its second-notice proposal.

Section 201.261: Contents of Request for Permission to Operate During a Malfunction, Breakdown, or Startup

Section 201.261 of the Board’s air pollution regulations provides a method for a source to submit in its application for an operating permit a request “for permission to continue to operate during a malfunction or breakdown, or to violate emissions limitations during startup.” SR at 4. The section provides in its entirety that:

- a) A request for permission to continue to operate during a malfunction or breakdown, if desired, shall be included as an integral part of the application for an operating permit pursuant to Subpart D, and shall include as a minimum: a full and detailed explanation of why such continued operation is necessary; the anticipated nature, sources and quantities of emissions which will occur during such continued operation; the anticipated length of time during which such operation will continue; all measures, such as use of off-shift labor or equipment which will be taken to minimize the quantity of air contaminant emissions and length of time during which such operation will continue. When the standards or

limitations of Subchapter c of this Chapter will be violated during startup, a request for permission to violate such standards or limitations shall be an integral part of the application for an operating permit pursuant to Subpart D, and shall include, as a minimum: a description of the startup procedure for each emission source, the duration and frequencies of such startups, the type and quantities of emissions during such startups and the applicant's efforts to minimize any such startup emissions, duration of individual startups and frequency of startups.

- b) The Agency may adopt procedures which require data and information in addition to or in amplification of the matters set forth in subsection (a), and which set forth the format in which all data and information shall be submitted. Such procedures and formats, and revisions thereto, shall not become effective until filed with the Secretary of State as required by the Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1001 et seq.) (APA Act). 35 Ill. Adm. Code 201.161.

IEPA proposed to repeal the entire section “because USEPA found it to be inconsistent with the CAA.” SR at 17; *see* Prop. 201 at 5-6.

Section 201.262: Standards for Granting Permission to Operate During a Malfunction, Breakdown, or Startup

Section 201.262 of the Board’s air pollution rules establishes standards that IEPA “must consider in order to grant a source permission “to continue operation during a malfunction or breakdown or to violate emission limitations during startup.” SR at 5. The section provides in its entirety that:

[p]ermission shall not be granted to allow continued operation during a malfunction or breakdown unless the applicant submits proof to the Agency that: such continued operation is necessary to prevent injury to persons or severe damage to equipment; or that such continuation is required to provide essential services; provided, however, that continued operation solely for the economic benefit of the owner or operator shall not be a sufficient reason for granting of permission. Permission shall not be granted to allow violation of the standards or limitations of Subchapter c of this Chapter during startup unless the applicant has affirmatively demonstrated that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups. 35 Ill. Adm. Code 201.262.

IEPA proposed to repeal the entire section “because USEPA found it to be inconsistent with the CAA.” SR at 17; *see* Prop. 201 at 6.

Section 201.263: Records and Reports

Section 201.263 of the Board's air pollution rules establishes "recordkeeping and reporting requirements for a source that obtains advance permission pursuant to Section 201.261." SR at 5. The section provides in its entirety that:

[a]ny person who causes or allows the continued operation of an emission source during a malfunction or breakdown of the emission source or related air pollution control equipment when such continued operation would cause a violation of the standards or limitations set forth in Subchapter c of this Chapter shall immediately report such incident to the Agency by telephone, telegraph or such other method as constitutes the fastest available alternative, except if otherwise provided in the operating permit. Thereafter, any such person shall comply with all reasonable directives of the Agency with respect to the incident. In addition, any person subject to this Subpart shall maintain such records and make such reports as may be required in procedures adopted by the Agency pursuant to Subpart K. 35 Ill. Adm. Code 201.263.

IEPA proposed to repeal the entire section because it depends upon and is unnecessary with Sections 201.261 and 201.262, which it proposed to repeal. SR at 17; *see* Prop. 201 at 5-6.

Section 201.264: Continued Operation or Startup Prior to Granting of Operating Permit

Section 201.264 of the Board's air pollution rules provides that a source wishing to continue operating during a malfunction or to violate emissions standards during startup before it is issued an operating permit "must make an immediate application for permission to do so." SR at 5. The section provides in its entirety that:

[a]ny person desiring to continue to operate, or to startup in accordance with Section 201.149 prior to the date when an operating permit is required pursuant to Section 201.143 or 201.144, shall make immediate application for permission to operate during a malfunction, breakdown or startup in accordance with Section 201.261. 35 Ill. Adm. Code 201.264.

IEPA proposed to repeal this entire section "because it is inconsistent with the USEPA's SSM Policy and the CAA." SR at 17-18; *see* Prop. 201 at 6-7.

Section 201.265: Effect of Granting of Permission to Operate During a Malfunction, Breakdown, or Startup

Section 201.265 of the Board's air pollution rules provides that permission to continue operating during a malfunction or to violate emission limitations during startup "constitute a *prima facie* defense to an enforcement action alleging violation of the Administrative Code or air quality standards." SR at 5. The section provides in its entirety that:

[t]he granting of permission to operate during a malfunction or breakdown, or to violate the standards or limitations of Subchapter c of this Chapter during startup, and full compliance with any terms and conditions connected therewith, shall be a

prima facie defense to an enforcement action alleging a violation of Section 201.149, of the emission and air quality standards of this Chapter, and of the prohibition of air pollution during the time of such malfunction, breakdown or startup. 35 Ill. Adm. Code 201.265.

IEPA proposed to repeal this entire section “because USEPA found it to be inconsistent with the CAA.” SR at 18; *see* Prop. 201 at 7.

Section 201.301: Records

Section 201.301 of the Board’s air pollution rules provides in its entirety that:

[t]he owner or operator of any emission source or air pollution control equipment shall maintain, as a minimum: records detailing all activities pursuant to any compliance program and project completion schedule pursuant to Subpart H; records detailing all malfunctions, breakdowns or startups pursuant to Subpart I and records of all monitoring and testing conducted pursuant to Subpart J, plus records of all monitoring and testing of any type whatsoever conducted with respect to specified air contaminants. All such records shall be made available to the Agency at any reasonable time.

- a) The Agency may adopt procedures which:
 - 1) Require additional records be maintained consistent with these regulations; and
 - 2) Set forth the format in which all records shall be maintained.
- b) Such procedures and formats, and revisions thereto, shall not become effective until filed with the Secretary of State as required by the APA Act. 35 Ill. Adm. Code 201.301.

IEPA removed references to Subpart I, which it seeks to repeal. SR at 18. IEPA proposed the following revisions to this section:

[t]he owner or operator of any emission source or air pollution control equipment shall maintain, as a minimum: records detailing all activities pursuant to any compliance program and project completion schedule pursuant to Subpart H; ~~records detailing all malfunctions, breakdowns or startups pursuant to Subpart I~~ and records of all monitoring and testing conducted pursuant to Subpart J, plus records of all monitoring and testing of any type whatsoever conducted with respect to specified air contaminants. All such records shall be made available to the Agency at any reasonable time.

- c) The Agency may adopt procedures which:

- 3) Require additional records be maintained consistent with these regulations; and
 - 4) Set forth the format in which all records shall be maintained.
- d) Such procedures and formats, and revisions thereto, shall not become effective until filed with the Secretary of State as required by the APA Act. Prop. 201 at 7.

In this section, JCAR suggested one change to the Board’s first-notice proposal. *See* PC 4. In this case, JCAR suggested this non-substantive change to clarify language. IEPA indicated that the change is acceptable (*see* Tr.1 at 181), and the Board includes this revision in its second-notice proposal.

The Board proposed a small number of additional revisions to clarify or simplify this section, each of which is intended to be non-substantive. Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, R 23-18, slip op. at 3-21 (Dec. 15, 2022); *see* 46 Ill. Reg. 20627, 20638, 20644 (December 30, 2022). The Board asked IEPA to comment on whether the non-substantive changes proposed by the Board in the first-notice proposal and its pre-filed questions for the first hearing are acceptable to IEPA. Board Questions.1 at 2; *see* Tr.1 at 186. IEPA responded that it “has no objection to those changes,” (Tr. at 186) and the Board includes these revisions in its second-notice proposal.

Part 202: Alternative Control Strategies

Section 202.107: Allowable Emissions

Section 202.107 of the Board’s air pollution rule provides in its entirety that:

- a) “Allowable emissions” means the emission rate of an emission source calculated using the maximum rated capacity of the emission source (unless the emission source is subject to permit conditions or other enforceable limits which restrict the operating rate, or hours of operation, or both) and the more stringent of the following:
 - 1) The applicable emission standard or limitation contained in this Chapter, including those with a future compliance date; or
 - 2) The emissions rate specified as a permit condition including those with a future compliance date.
- b) The allowable emissions may be expressed as a permit condition limiting annual emissions or material or fuel throughput.

- c) Allowable emissions shall include a reasonable estimate of emissions in excess of applicable standards during start-up, malfunction, or breakdown, as appropriate, only if the applicable provisions of 35 Ill. Adm. Code Part 201 have been complied with.
- d) If an emission source is not subject to an emission standard under subsection (a) and is not conditioned pursuant to subsection (b), the allowable emissions shall be the source's potential to emit. 35 Ill. Adm. Code 202.107.

IEPA removed subsection (c), stating that it depends upon Subpart I, which it proposes to repeal. SR at 18; *see* Prop. 202 at 2-3.

In this section, JCAR suggested two changes to the Board's first-notice proposal. *See* PC 4. In these cases, JCAR suggested non-substantive changes that, for example, clarify language or correct punctuation. IEPA indicated that the changes are acceptable (*see* Tr.1 at 182), and the Board includes these revisions in its second-notice proposal.

The Board proposed a small number of additional revisions to clarify or simplify this section, each of which is intended to be non-substantive. Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, R 23-18, slip op. at 3-21 (Dec. 15, 2022); *see* 46 Ill. Reg. 20627, 20638, 20644 (December 30, 2022). The Board asked IEPA to comment on whether the non-substantive changes made in the first-notice proposal by the Board are acceptable to IEPA. Board Questions.1 at 2; *see* Tr.1 at 186. IEPA responded that it "has no objection to those changes," (Tr. at 186) and the Board includes these revisions in its second-notice proposal.

Section 202.211: Analysis of Emissions

Section 202.211 of the Board's air pollution regulations provides in its entirety that:

- a) A permit application under this Subpart shall provide a comparison of the baseline emissions and the emissions which would be permitted under the proposed ACS [Alternative Control Strategy] for each emission source involved in the ACS. Where appropriate, this analysis shall address differences between the emission sources to be covered by the ACS with regard to:
 - 1) Methods of determining emissions;
 - 2) Consistency and reliability of the performance of the emission sources and any associated control devices;
 - 3) Frequency and duration of operating during malfunction or breakdown, or excess emissions during start-up;

- 4) Methods of operation, including operating schedules, range of raw materials or products, etc.; and
 - 5) Other characteristics of the emission sources or their operation which may affect equivalence of emissions.
- b) The analysis shall describe any increases in emissions from emission sources outside the ACS which may accompany the proposed ACS. 35 Ill. Adm. Code 201.211

IEPA sought to clarify subsection (a)(3) with non-substantive amendments. SR at 18; *see* Prop. 202 at 3. IEPA proposed to revise that subsection to require that the comparison of emissions must, where appropriate, address “[f]requency and duration of operating during malfunction or breakdown with excess emissions, or ~~excess emissions~~ during start-up with excess emissions.” Prop. 202 at 2.

In this section, JCAR suggested one change to the Board’s first-notice proposal. *See* PC 4. In these cases, JCAR suggested this non-substantive change to clarify language. IEPA indicated that the change is acceptable (*see* Tr.1 at 181), and the Board includes this revision in its second-notice proposal.

The Board proposed a small number of additional revisions to clarify or simplify this section, each of which is intended to be non-substantive. Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, R 23-18, slip op. at 3-21 (Dec. 15, 2022); *see* 46 Ill. Reg. 20627, 20638, 20644 (December 30, 2022). The Board asked IEPA to comment on whether the non-substantive changes made in the first-notice proposal by the Board are acceptable to IEPA. Board Questions.1 at 2; *see* Tr.1 at 186. IEPA responded that it “has no objection to those changes,” (Tr. at 186) and the Board includes these revisions in its second-notice proposal.

Part 212: Visible and Particulate Matter Emissions

Section 212.124: Exceptions

Subsection (a) of Section 212.124 of the Board’s air pollution regulations provides in its entirety that:

Sections 212.122 [Visible Emissions Limitations for Certain Emission Units For Which Construction or Modification Commenced On or After April 14, 1972] and 212.123 [Visible Emissions Limitations for All Other Emission Units] of this Subpart shall apply during times of startup, malfunction and breakdown except as provided in the operating permit granted in accordance with 35 Ill. Adm. Code 201. 35 Ill. Adm. Code 212.124(a).

IEPA removed the entire subsection (a) because it refers to Subpart I, which it proposes to repeal. SR at 18-19; *see* Prop. 212 at 5.

In this section, JCAR suggested three changes to the Board’s first-notice proposal. *See* PC 4. In these cases, JCAR suggested non-substantive changes that, for example, simplify or clarify language or correct punctuation. IEPA indicated that the changes are acceptable, (*see* Tr.1 at 182-183), and the Board includes these revisions in its second-notice proposal.

The Board proposed a small number of additional revisions to clarify or simplify this section, each of which is intended to be non-substantive. Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, R 23-18, slip op. at 3-21 (Dec. 15, 2022); *see* 46 Ill. Reg. 20627, 20638, 20644 (December 30, 2022). The Board asked IEPA to comment on whether the non-substantive changes proposed by the Board in the first-notice proposal and its pre-filed questions for the first hearing are acceptable to IEPA. Board Questions.1 at 2; *see* Tr.1 at 186. IEPA responded that it “has no objection to those changes,” (Tr. at 186) and the Board includes these revisions in its second-notice proposal.

Section 212.324: Process Emission Units in Certain Areas

Subsection (f) of Section 212.324 of the Board’s air pollution regulations provides in its entirety that:

Maintenance and Repair. For any process emission unit subject to subsection (a) of this Section, the owner or operator shall maintain and repair all air pollution control equipment in a manner that assures that the emission limits and standards in this Section shall be met at all times. This Section shall not affect the applicability of 35 Ill. Adm. Code 201.149. Proper maintenance shall include the following minimum requirements:

- 1) Visual inspections of air pollution control equipment;
- 2) Maintenance of an adequate inventory of spare parts; and
- 3) Expeditious repairs, unless the emission unit is shutdown. 35 Ill. Adm. Code 212.324(f).

IEPA removed from subsection (f) a sentence referring to 35 Ill. Adm. Code 201.149 “regarding advance permission for continued operation during malfunction or breakdown or violation of emission limitations during startup.” SR at 19. IEPA proposed to revise subsection (f) as follows:

Maintenance and Repair. For any process emission unit subject to subsection (a) of this Section, the owner or operator shall maintain and repair all air pollution control equipment in a manner that assures that the emission limits and standards in this Section shall be met at all times. ~~This Section shall not affect the applicability of 35 Ill. Adm. Code 201.149.~~ Proper maintenance shall include the following minimum requirements:

- 1) Visual inspections of air pollution control equipment;
- 2) Maintenance of an adequate inventory of spare parts; and

- 3) Expeditious repairs, unless the emission unit is shutdown. Prop. 212 at 8.

In this section, JCAR suggested ten changes to the Board’s first-notice proposal. *See* PC 4. In many cases, JCAR suggested non-substantive changes that, for example, simplify or clarify language or correct punctuation. For three of the changes, the Board respectfully declines JCAR’s suggestions as the Board was not persuaded that the suggested changes genuinely clarified the rule. *See id.* IEPA indicated that the changes are acceptable, (*see* Tr.1 at 183-185), and the Board includes the other seven revisions in its second-notice proposal.

The Board proposed a small number of additional revisions to clarify or simplify this section, each of which is intended to be non-substantive. Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, R 23-18, slip op. at 3-21 (Dec. 15, 2022); *see* 46 Ill. Reg. 20627, 20638, 20644 (December 30, 2022). The Board asked IEPA to comment on whether the non-substantive changes proposed by the Board in the first-notice proposal and its pre-filed questions for the first hearing are acceptable to IEPA. Board Questions.1 at 2; *see* Tr.1 at 186. IEPA responded that it “has no objection to those changes,” (Tr. at 186) and the Board includes these revisions in its second-notice proposal.

TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

Potentially Affected Entities

IEPA states that removing the SSM provisions would apply statewide. SR at 15. “Any source that applies for an operating permit that would otherwise seek this permission from the Agency would be impacted by this rulemaking.” *Id.*

Request for Economic Impact Study

As noted above under “Procedural History,” the Board on December 16, 2022, requested that DCEO conduct an economic impact study of IEPA’s proposal by January 27, 2023. *See* 415 ILCS 5/27(b) (2020). The Board did not receive a response to its request. At the second hearing, no participant testified or commented on the Board’s request or the response to it. Tr.2 at 71-72.

Technical Feasibility

IEPA asserts that the proposed amendments are technically feasible because they “do not impose any new or additional obligations such as emission limits or control requirements on affected sources.” SR at 15. IEPA asserts that “Illinois’ SSM provisions never excused sources from the obligation to comply with emission standards during startup or malfunction events.” *Id.* IEPA argues that the effect of its proposal is only on the ability of a source to seek advance permission for a legal defense to excess emissions through a permit application. *Id.* IEPA adds that the Board would have addressed the technical feasibility of the underlying standards when it

adopted them. *Id.* Accordingly, the Board finds that the proposal is both technically feasible and economically reasonable. *See* 415 ILCS 5/27(a) (2020).

Economic Reasonableness

IEPA asserts that the proposed amendments are economically reasonable because they “do not impose any new or additional obligations such as emission limits or control requirements on affected sources.” SR at 15. IEPA adds that the Board would have addressed the economic reasonableness of the underlying standards when it adopted them. *Id.*

IEPA acknowledges that, if the Board adopts the proposed rules, some sources may wish “to make changes to source configurations, operations and practices, or pollution control equipment to meet applicable emission limits at all times.” SR at 15. IEPA argues that these costs “are indeterminate due to the widely varied source categories that could be affected and the measures that may be necessary for sources to ensure compliance with applicable standards and limitations at all times.” *Id.* The Board finds that these proposed amendments would not have any adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(b) (2020).

SUBDOCKET TO CONSIDER ALTERNATIVE EMISSIONS STANDARDS FOR SSM PERIODS

The Board received proposals for alternative emissions standards from IERG, Dynege, and MWG. The issue of these alternative proposals was discussed extensively at the hearings and in comments. While the Board finds that IEPA’s proposal under Section 28.5 of the Act limits the scope of this rulemaking, the Board also finds that it is appropriate to consider further the alternative standards offered by participants. Therefore, the Board will open a sub-docket to consider specific alternative emissions standards for SSM periods. The comments from this docket will also be considered in the sub-docket concerning alternative standards. The Board directs the hearing officer to issue an order asking the participants to develop rule language proposals or re-submit the language proposed at the second hearing. Therefore, the Board directs the Clerk to open a sub-docket on the issue of alternative emissions standards for SSM periods and directs the hearing officer to proceed with the sub-docket.

CONCLUSION

The Board concludes to submit amended air pollution rules to JCAR for second-notice review.

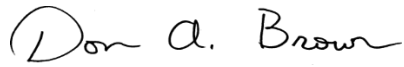
ORDER

1. The Board directs the Clerk to file the following proposed amendments with JCAR for second-notice review. The Board underlines proposed additions to the rules and strikes through proposed deletions.

2. The Board directs the Clerk to open a sub-docket to consider proposed rules on alternative emissions standards for SSM periods.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 6, 2023 by a vote of 3-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above the printed name and title.

Don A. Brown, Clerk
Illinois Pollution Control Board