

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Nitrogen Oxides Emissions
- 2) Code Citation: 35 Ill. Adm. Code 217
- 3) Section Number: 217.751 Proposed Action: New
- 4) Statutory Authority: Implementing Section 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27, and 28]
- 5) A Complete Description of the Subjects and Issues Involved:

The Board's May 7, 2009 opinion and order in In the Matter of: Nitrogen Oxide (NO_x) Trading Program Sunset Provisions for Electric Generating Units (EGU's): New 35 Ill. Adm. Code 217.751, R09-20 discusses in detail the amendments to Part 217.Subpart W proposed in this rulemaking.

On May 7, 2009, the Illinois Pollution Control Board authorized first notice publication, without comment on the merits, of an Illinois Environmental Protection Agency (IEPA) proposal that would sunset the provisions of the Nitrogen Oxides (NO_x) Trading Program rules for electrical generating units (EGUs). IEPA filed this proposal with the Board on April 21, 2009, along with a motion for expedited review requesting immediate first notice publication and the scheduling of hearings as soon as possible.

In its statement of reasons, the IEPA states that Illinois adopted both the NO_x rules at 35 Ill. Adm. Code 217 and the Clean Air Interstate Rule (CAIR) at 35 Ill. Adm. Code 225 after adoption of similar rules by the United States Environmental Protection Agency (USEPA). USEPA has approved both sets of rules for inclusion in the State Implementation Plan (SIP) for ozone attainment. As do the USEPA rules, the CAIR provisions, as set forth in 35 Ill. Code 225.Subpart E, include a trading program for control of NO_x emissions during the ozone season that replaces the provisions in Part 217.Subpart W for EGUs beginning with the 2009 control period (May 1 through September 30) and thereafter.

But, due to a federal court ruling concerning the federal CAIR rules in *North Carolina v. USEPA*, 531 F.3d 896 (C.A.D.C. Cir. 2008), USEPA must take additional action concerning its rules. To solve the problem, in 40 CFR 51.123(bb)(1)(i), USEPA has provided that states such as Illinois with approved CAIR programs may revise their applicable SIP so that the provisions of the NO_x SIP Call Trading Program do not apply to affected EGUs.

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

IEPA's proposal requesting the Board to amend the Illinois rules is the first step to revision of the SIP. If the Board adopts a final rule in this rulemaking, IEPA will submit the rule to USEPA for approval and inclusion in the SIP.

EGUs currently must comply with two sets of rules for the 2009 ozone season and beyond: the Illinois Clean Air Interstate Rule (CAIR) requirements at Part 225 and the Illinois NO_x Trading Program at Part 217. To address and remove the duplication, this rulemaking proposes to sunset the provisions of the NO_x Trading Program, by adding a new Section 217.751 to sunset the rules beginning with the 2009 ozone control season.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: The Agency stated that it relied on the following documents in preparing its proposal to the Board:
 - a. Illinois Environmental Protection Act (415 ILCS 5.)
 - b. The Clean Air Act, as amended in 1990 (42 USC 7401 et seq.);
 - c. Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule, 70 *Fed. Reg.* 25162 (May 12, 2005);
 - d. Approval and Promulgation of Air Quality Implementation Plans; Illinois; Oxides of Nitrogen Regulations, 66 *Fed. Reg.* 56454 (November 8, 2001)
 - e. Approval of Implementation Plans of Illinois; Clean Air Interstate Rule, 72 *Fed. Reg.* 58528 (October 16, 2007);
 - f. North Carolina v. USEPA, 531 F.3d 896 (C.A.D.C. Cir. 2008); and
 - g. North Carolina v. USEPA, 550 F.3d 1176 (C.A.D.C. Cir. 2008).
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

| <u>Section Numbers:</u> | <u>Proposed Action:</u> | <u>Illinois Register Citation:</u> |
|-------------------------|-------------------------|------------------------------------|
| 217.3863 | Amend | 32 Ill. Reg. 17075; Oct. 31, 2008 |
| 217.388 | Amend | 32 Ill. Reg. 17075; Oct. 31, 2008 |
| 217.390 | Amend | 32 Ill. Reg. 17075; Oct. 31, 2008 |
| 217.392 | Amend | 32 Ill. Reg. 17075; Oct. 31, 2008 |
| 217.394 | Amend | 32 Ill. Reg. 17075; Oct. 31, 2008 |
| 217.396 | Amend | 32 Ill. Reg. 17075; Oct. 31, 2008 |
| 217.100 | Amended | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.104 | Amended | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.121 | Repealed | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.141 | Amended | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.150 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.152 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.154 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.155 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.156 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.157 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.158 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.160 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.162 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.164 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.165 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.166 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.180 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.182 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.184 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.185 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.186 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.200 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.202 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.204 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.220 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.222 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.240 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.242 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.244 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.340 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.342 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |
| 217.344 | New Section | 33 Ill. Reg. 6921; May 22, 2009 |

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

217.345 New Section 33 Ill. Reg. 6921; May 22, 2009
217.APPENDIX H New Section 33 Ill. Reg. 6921; May 22, 2009

- 11) Statement of Statewide Policy Objectives: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R09-20 and be addressed to:

John Therriault
Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

The Board will also accept sworn testimony and oral public comment at the hearings scheduled as followed:

Thursday, June 18, 2008, 1:00 p.m.

Thursday, July 23, 2009 1:00 p.m.

JAMES R. THOMPSON CENTER
Room 11-512
100 W. Randolph-Room 11-512
Chicago, IL 60601

IEPA OFFICE BUILDING
Room 1244N, First Floor
1021 N. Grand Avenue East
Springfield, IL 62794

Procedural details concerning the order of hearings and requirements concerning pre-filing of testimony are detailed in a May 13, 2009 hearing officer order.

Interested persons may request copies of the Board's opinion and orders and hearing officer orders in Docket R09-20 by calling the Clerk's office at 312-814-3620, or download from the Board's Web site at www.ipcb.state.il.us.

For more information, contact Kathleen Crowley at 312/814-6929 or email at crowlek@ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- A) Types of small businesses, small municipalities and not for profit corporations affected: Any of the 229 electrical generating units that are subject to the NO_x Trading Program and that identify themselves as small businesses, small municipalities, or not-for-profit corporations
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of Professional skills necessary for compliance: None.
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2006 (30 Ill. Reg. 11906-08). This rulemaking was not included in either of the two most recent regulatory agendas because: the need for the rulemaking is the result of recent federal court decisions concerning USEPA rules. This caused uncertainty associated with the CAIR Trading program that was adopted by both USEPA and Illinois to replace the one that is the subject of this proposal. This is explained in item 5), above.
- 15) Does this amendment require the review of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code [30 ILCS 500/5-25]? No

The full text of the Proposed Amendment begins on the next page:

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 OXIDES EMISSIONS

SUBPART A: GENERAL PROVISIONS

Section
217.100 Scope and Organization
217.101 Measurement Methods
217.102 Abbreviations and Units
217.103 Definitions
217.104 Incorporations by Reference

SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES

Section
217.121 New Emission Sources

SUBPART C: EXISTING FUEL COMBUSTION EMISSION SOURCES

Section
217.141 Existing Emission Sources in Major Metropolitan Areas

SUBPART K: PROCESS EMISSION SOURCES

Section
217.301 Industrial Processes

SUBPART O: CHEMICAL MANUFACTURE

Section
217.381 Nitric Acid Manufacturing Processes

SUBPART Q: STATIONARY RECIPROCATING
INTERNAL COMBUSTION ENGINES AND TURBINES

Section
217.386 Applicability
217.388 Control and Maintenance Requirements
217.390 Emissions Averaging Plans
217.392 Compliance
217.394 Testing and Monitoring
217.396 Recordkeeping and Reporting

SUBPART T: CEMENT KILNS

Section
217.400 Applicability
217.402 Control Requirements
217.404 Testing
217.406 Monitoring
217.408 Reporting

217.410 Recordkeeping

SUBPART U: NOx CONTROL AND TRADING PROGRAM FOR
SPECIFIED NOx GENERATING UNITS

Section

217.450 Purpose
217.452 Severability
217.454 Applicability
217.456 Compliance Requirements
217.458 Permitting Requirements
217.460 Subpart U NOx Trading Budget
217.462 Methodology for Obtaining NOx Allocations
217.464 Methodology for Determining NOx Allowances from the New Source Set-
Aside
217.466 NOx Allocations Procedure for Subpart U Budget Units
217.468 New Source Set-Asides for "New" Budget Units
217.470 Early Reduction Credits (ERCs) for Budget Units
217.472 Low-Emitter Requirements
217.474 Opt-In Units
217.476 Opt-In Process
217.478 Opt-In Budget Units: Withdrawal from NOx Trading Program
217.480 Opt-In Units: Change in Regulatory Status
217.482 Allowance Allocations to Opt-In Budget Units

SUBPART V: ELECTRIC POWER GENERATION

Section

217.521 Lake of Egypt Power Plant
217.700 Purpose
217.702 Severability
217.704 Applicability
217.706 Emission Limitations
217.708 NOx Averaging
217.710 Monitoring
217.712 Reporting and Recordkeeping

SUBPART W: NOx TRADING PROGRAM FOR
ELECTRICAL GENERATING UNITS

Section

217.750 Purpose
217.751 Sunset Provisions
217.752 Severability
217.754 Applicability
217.756 Compliance Requirements
217.758 Permitting Requirements
217.760 NOx Trading Budget
217.762 Methodology for Calculating NOx Allocations for Budget Electrical
Generating Units (EGUs)
217.764 NOx Allocations for Budget EGUs
217.768 New Source Set-Asides for "New" Budget EGUs
217.770 Early Reduction Credits for Budget EGUs
217.774 Opt-In Units
217.776 Opt-In Process
217.778 Budget Opt-In Units: Withdrawal from NOx Trading Program
217.780 Opt-In Units: Change in Regulatory Status
217.782 Allowance Allocations to Budget Opt-In Units

SUBPART X: VOLUNTARY NOx EMISSIONS REDUCTION PROGRAM

Section

217.800 Purpose
217.805 Emission Unit Eligibility
217.810 Participation Requirements
217.815 NOx Emission Reductions and the Subpart X NOx Trading Budget
217.820 Baseline Emissions Determination
217.825 Calculation of Creditable NOx Emission Reductions
217.830 Limitations on NOx Emission Reductions
217.835 NOx Emission Reduction Proposal
217.840 Agency Action
217.845 Emissions Determination Methods
217.850 Emissions Monitoring
217.855 Reporting
217.860 Recordkeeping
217.865 Enforcement

217.APPENDIX A Rule into Section Table
217.APPENDIX B Section into Rule Table
217.APPENDIX C Compliance Dates
217.APPENDIX D Non-Electrical Generating Units
217.APPENDIX E Large Non-Electrical Generating Units
217.APPENDIX F Allowances for Electrical Generating Units
217.APPENDIX G Existing Reciprocating Internal Combustion Engines Affected by the NOx SIP Call

~~Authority~~**AUTHORITY:** Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28.5 (2004)].

~~Source~~**SOURCE:** Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-18 at 31 Ill. Reg. 14271, effective September 25, 2007; amended in ~~R07-19, at 33 Ill. Reg. _____, effective _____, amended in R08-19, at 33 Ill. Reg. _____, effective _____, amended in R09-20 at 33 Ill. Reg. _____, effective _____.~~

SUBPART W: NOx TRADING PROGRAM FOR ELECTRICAL GENERATING UNITS

Section 217.751 Sunset Provisions

The provisions of this Subpart W shall not apply for any control period in 2009 or thereafter. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

(Source: Added at 33 Ill. Reg. _____, effective _____)

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~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENT~~

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| Style change | 0 |
| Format changed | 0 |
| Total changes | 13 |

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE B: AIR POLLUTION
3 CHAPTER I: POLLUTION CONTROL BOARD
4 SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS
5 FOR STATIONARY SOURCES
6

7 PART 217
8 NITROGEN OXIDES EMISSIONS
9

10 SUBPART A: GENERAL PROVISIONS
11

12 Section
13 217.100 Scope and Organization
14 217.101 Measurement Methods
15 217.102 Abbreviations and Units
16 217.103 Definitions
17 217.104 Incorporations by Reference
18

19 SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES
20

21 Section
22 217.121 New Emission Sources
23

24 SUBPART C: EXISTING FUEL COMBUSTION EMISSION SOURCES
25

26 Section
27 217.141 Existing Emission Sources in Major Metropolitan Areas
28

29 SUBPART K: PROCESS EMISSION SOURCES
30

31 Section
32 217.301 Industrial Processes
33

34 SUBPART O: CHEMICAL MANUFACTURE
35

36 Section
37 217.381 Nitric Acid Manufacturing Processes
38

39 SUBPART Q: STATIONARY RECIPROCATING
40 INTERNAL COMBUSTION ENGINES AND TURBINES
41

42 Section
43 217.386 Applicability

| | | |
|----|---------|--------------------------------------|
| 44 | 217.388 | Control and Maintenance Requirements |
| 45 | 217.390 | Emissions Averaging Plans |
| 46 | 217.392 | Compliance |
| 47 | 217.394 | Testing and Monitoring |
| 48 | 217.396 | Recordkeeping and Reporting |

49

50 SUBPART T: CEMENT KILNS

51

52 Section

| | | |
|----|---------|----------------------|
| 53 | 217.400 | Applicability |
| 54 | 217.402 | Control Requirements |
| 55 | 217.404 | Testing |
| 56 | 217.406 | Monitoring |
| 57 | 217.408 | Reporting |
| 58 | 217.410 | Recordkeeping |

59

60 SUBPART U: NO_x CONTROL AND TRADING PROGRAM FOR
61 SPECIFIED NO_x GENERATING UNITS

62 Section

| | | |
|----|---------|--|
| 63 | 217.450 | Purpose |
| 64 | 217.452 | Severability |
| 65 | 217.454 | Applicability |
| 66 | 217.456 | Compliance Requirements |
| 67 | 217.458 | Permitting Requirements |
| 68 | 217.460 | Subpart U NO _x Trading Budget |
| 69 | 217.462 | Methodology for Obtaining NO _x Allocations |
| 70 | 217.464 | Methodology for Determining NO _x Allowances from the New Source Set-Aside |
| 71 | 217.466 | NO _x Allocations Procedure for Subpart U Budget Units |
| 72 | 217.468 | New Source Set-Asides for "New" Budget Units |
| 73 | 217.470 | Early Reduction Credits (ERCs) for Budget Units |
| 74 | 217.472 | Low-Emitter Requirements |
| 75 | 217.474 | Opt-In Units |
| 76 | 217.476 | Opt-In Process |
| 77 | 217.478 | Opt-In Budget Units: Withdrawal from NO _x Trading Program |
| 78 | 217.480 | Opt-In Units: Change in Regulatory Status |
| 79 | 217.482 | Allowance Allocations to Opt-In Budget Units |

80

81 SUBPART V: ELECTRIC POWER GENERATION

82

83 Section

| | | |
|----|---------|---------------------------|
| 84 | 217.521 | Lake of Egypt Power Plant |
| 85 | 217.700 | Purpose |
| 86 | 217.702 | Severability |

| | | |
|-----|----------------|--|
| 87 | 217.704 | Applicability |
| 88 | 217.706 | Emission Limitations |
| 89 | 217.708 | NO _x Averaging |
| 90 | 217.710 | Monitoring |
| 91 | 217.712 | Reporting and Recordkeeping |
| 92 | | |
| 93 | | SUBPART W: NO _x TRADING PROGRAM FOR |
| 94 | | ELECTRICAL GENERATING UNITS |
| 95 | | |
| 96 | Section | |
| 97 | 217.750 | Purpose |
| 98 | <u>217.751</u> | <u>Sunset Provisions</u> |
| 99 | 217.752 | Severability |
| 100 | 217.754 | Applicability |
| 101 | 217.756 | Compliance Requirements |
| 102 | 217.758 | Permitting Requirements |
| 103 | 217.760 | NO _x Trading Budget |
| 104 | 217.762 | Methodology for Calculating NO _x Allocations for Budget Electrical Generating |
| 105 | | Units (EGUs) |
| 106 | 217.764 | NO _x Allocations for Budget EGUs |
| 107 | 217.768 | New Source Set-Asides for "New" Budget EGUs |
| 108 | 217.770 | Early Reduction Credits for Budget EGUs |
| 109 | 217.774 | Opt-In Units |
| 110 | 217.776 | Opt-In Process |
| 111 | 217.778 | Budget Opt-In Units: Withdrawal from NO _x Trading Program |
| 112 | 217.780 | Opt-In Units: Change in Regulatory Status |
| 113 | 217.782 | Allowance Allocations to Budget Opt-In Units |
| 114 | | |
| 115 | | SUBPART X: VOLUNTARY NO _x EMISSIONS REDUCTION PROGRAM |
| 116 | | |
| 117 | Section | |
| 118 | 217.800 | Purpose |
| 119 | 217.805 | Emission Unit Eligibility |
| 120 | 217.810 | Participation Requirements |
| 121 | 217.815 | NO _x Emission Reductions and the Subpart X NO _x Trading Budget |
| 122 | 217.820 | Baseline Emissions Determination |
| 123 | 217.825 | Calculation of Creditable NO _x Emission Reductions |
| 124 | 217.830 | Limitations on NO _x Emission Reductions |
| 125 | 217.835 | NO _x Emission Reduction Proposal |
| 126 | 217.840 | Agency Action |
| 127 | 217.845 | Emissions Determination Methods |
| 128 | 217.850 | Emissions Monitoring |
| 129 | 217.855 | Reporting |

130 217.860 Recordkeeping
131 217.865 Enforcement
132
133 217.APPENDIX A Rule into Section Table
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135 217.APPENDIX C Compliance Dates
136 217.APPENDIX D Non-Electrical Generating Units
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140 SIP Call
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142 AUTHORITY: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28.5 of the
143 Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28.5 (2004)].
144

145 SOURCE: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23,
146 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101,
147 effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128,
148 effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001;
149 amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-
150 18 at 31 Ill. Reg. 14271, effective September 25, 2007; amended in R09-20 at 33 Ill. Reg. ____,
151 effective _____.
152

153 SUBPART W: NO_x TRADING PROGRAM FOR
154 ELECTRICAL GENERATING UNITS
155

156 **Section 217.751 Sunset Provisions**
157

158 The provisions of this Subpart W shall not apply for any control period in 2009 or thereafter.
159 Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the
160 applicable provisions of this Subpart.
161

162 (Source: Added at 33 Ill. Reg. ____, effective _____)