ILLINOIS POLLUTION CONTROL BOARD
April 5, 2001

IN THE MATTER OF:	)	
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PROPOSED NEW 35 ILL. ADM. CODE 217.SUBPART U, NO_x CONTROL AND TRADING PROGRAM FOR SPECIFIED NO_x GENERATING UNITS, SUBPART X, VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM, AND AMENDMENTS TO 35 ILL. ADM. CODE 211	)	R01-17 (Rulemaking – Air)

Adopted Rule. Final Order.

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

Today the Board adopts two sets of rules adding two new subparts to Part 217: Nitrogen Oxides Emissions, of the Board's air regulations. Subpart U implements Sections 9.9(b), (c), (d)(2), and (d)(4) of the Environmental Protection Act (Act) (415 ILCS 5/9.9(b), (c), (d)(2), and (d)(4) (1998) (1998 State Bar Edition, 1999 Supp.)) by capping the emissions of nitrogen oxides (NO_x) during the ozone control period (May 1 through September 30 of each year beginning in 2004[1]) and implementing the federal NO_x trading program for specified NO_x electrical generating units (EGUs). The existing units subject to this rulemaking under Subpart U are specifically listed on Appendix E, and are often referred to as large non-EGUs.

Subpart X implements Section 9.9(d) of the Act by providing a method for the generation of additional NO_x allowances to be used by units subject to the requirements of Subparts U or W. These allowances will be generated by voluntary reductions at sources other than large EGUs and large non-EGUs. Also adopted today are two conforming amendments to Part 211: Definitions and General Provisions. The individual rules are discussed later in this opinion, along with a discussion of the purpose and applicability of these programs.

The United States Environmental Protection Agency (USEPA) requires 22 States, including Illinois, and the District of Columbia to submit State Implementation Plan (SIP) revisions to prohibit specified amounts of emissions of NO_x for the purpose of reducing NO_x and ozone transport across state boundaries in the eastern half of the

[1] Pursuant to a court order, the ozone control period for the 2004 season begins on May 31, 2004. See Michigan v. EPA, 213 F.3d 663 (D.C. Cir., 2000).

United States. The Illinois General Assembly has found that an emissions trading program is a cost-effective means of reducing NO_x emissions (415 ILCS 5/9.9(a)(3) (1998) (1998 State Bar Edition, 1999 Supp.), and directed the Board to adopt regulations implementing such a program (415 ILCS 5/9.9(b) and (d) (1998) (1998 State Bar Edition, 1999 Supp.)). The Board's action today is in response to that directive.[2]

PROCEDURAL HISTORY

The Illinois Environmental Protection Agency (Agency) filed this rulemaking proposal with the Board on October 16, 2000. The Board adopted the rules as proposed by the Agency for first notice on October 19, 2000. See Proposed New 35 Ill. Adm. Code 217.Subpart U, NO_x Control And Trading Program For Specified NO_x Generating Units, Subpart X, Voluntary NO_x Emissions Reduction Program, and Amendments to 35 Ill. Adm. Code 211 (October 19, 2000), R01-17. The Secretary of State published the first-notice rules in the *Illinois Register* on November 13, 2000 (45 Ill. Reg. 16,452, 16,467).

The Board held public hearings in this matter in Chicago, Illinois, on November 29, 2000, and December 20, 2000, before Board Hearing Officer Bobb Beauchamp and Board Member Marili McFawn.[3] The hearings were scheduled and conducted in accordance with Section 28.5 of the Act (415 ILCS 5/28.5 (1998)). Section 28.5 provides for "fast-track" adoption of certain regulations necessary for compliance with the Clean Air Act Amendments of 1990 (CAAA) (42 U.S.C. § 7401 *et seq*. (1990)).

The Agency presented a number of witnesses to testify and answer questions on behalf of this proposal. Additionally, several members of the regulated community also presented testimony at the hearings: the Illinois Environmental Regulatory Group (IERG); the University of Illinois (the University); and LTV Steel.

Section 27(b) of the Act requires the Board to request that the Department of Commerce and Community Affairs (DCCA) conduct a study of the economic impact of any proposed rules, and to conduct at least one public hearing on the economic impact of those proposed rules (415 ILCS 5/27(b) (1998)). The Board requested DCCA conduct such a study in an October 26, 2000 letter. At the December 20, 2000 hearing the Board hearing officer stated that the Board would rely on a March 10, 2000 DCCA

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[2] For a more complete discussion of the federal and State activity regarding this rulemaking, see the Board's second-notice opinion and order. Proposed New 35 Ill. Adm. Code 217.Subpart U, NO_x Control and Trading Program for Specified NO_x Generating Units, Subpart X, Voluntary NO_x Emissions Reduction Program, and Amendments to 35 Ill. Adm. Code 211 (February 15, 2001), R01-17.

[3] The transcripts of the hearing will be cited as "Tr.1 at ___" and "Tr.2 at ___." The exhibits will be referred to as "Exh. ___ at __."

letter stating that DCCA would not conduct economic impact studies on rules pending before the Board. Tr.2 at 10. The Board hearing officer asked for, but did not receive, any comments on the economic impact of these rules. *Id*.

The record in this matter closed on January 9, 2001, as required by Section 28.5(l) of the Act (415 ILCS 5/28.5(l) (1998)). The Board received four timely filed public comments: the Agency (PC 1), LTV Steel Company (PC 2), the University of Illinois (PC 3), and Clean Air Action (PC 4). On January 10, 2001, the Illinois Environmental Regulatory Group (PC 5) and Archer Daniels Midland Company (PC 6) filed public comments.

On February 15, 2001, the Board adopted its second-notice opinion and order, and sent this matter to the Joint Committee on Administrative Rules (JCAR) for its consideration. See Proposed New 35 Ill. Adm. Code 217.Subpart U, NO_x Control and Trading Program for Specified NO_x Generating Units, Subpart X, Voluntary NO_x Emissions Reduction Program, and Amendments to 35 Ill. Adm. Code 211 (February 15, 2001), R01-17. JCAR requested, and the Board agreed to, several minor changes to the rules proposed at second notice. JCAR then considered the proposed rules at its March 20, 2001 meeting, asked a few clarifying questions, and voted no objection.

NITROGEN OXIDES TRADING SYSTEM

The Illinois General Assembly in 1999 adopted new Section 9.9 of the Act titled "Nitrogen oxides trading system"[4] (415 ILCS 5/9.9 (1998 State Bar Edition, 1999 Supp.)). In Section 9.9 the General Assembly finds "[t]hat reducing emissions of NO_x in the State helps the State to meet the national ambient air quality standard for ozone . . . . ." (415 ILCS 5/9.9(a)(2) (1998 State Bar Edition, 1999 Supp.)) and "[t]hat emissions trading is a cost effective means of obtaining reductions of NO_x emissions" (415 ILCS 5/9.9(a)(3) (1998 State Bar Edition, 1999 Supp.)). Further, Section 9.9 directs that "the Board shall adopt regulations to implement an interstate NO_x trading program . . . as provided for in 40 CFR Part 96 . . . ." 415 ILCS 5/9.9(b) (1998 State Bar Edition, 1999 Supp.). Part 96 is the portion of the NO_x SIP Call that contains the federal NO_x emissions trading program.

Section 9.9(d) directs the Board to address specific issues in adopting regulations to implement the NO_x Trading Program. Section 9.9(d), in pertinent part, mandates that the Board:

1. assure that the economic impact and technical feasibility of NO_x emissions reductions under the NO_x Trading Program are

[4] On August 19, 1999, Governor Ryan signed Section 9.9 into law as Pub. Act 91-0631.

considered relative to the traditional regulatory control requirements in the State for EGUs and non-EGUs;

2. provide that emission units, as defined in Section 39.5(1) of this Act, may opt into the NO_x Trading Program;

3. provide for voluntary reductions of NO_x emissions from emission units, as defined in Section 39.5(1) of this Act, not otherwise included under paragraph (c) or (d)(2) of this Section to provide additional allowances to EGUs and non-EGUs to be allocated by the Agency. The regulations shall further provide that such voluntary reductions are verifiable, quantifiable, permanent, and federally enforceable;

4. provide that the Agency allocate to non-EGUs allowances that are designated in the rule, unless the Agency has been directed to transfer the allocations to another unit subject to the requirements of the NO_x Trading Program, and that upon shutdown of a non-EGU, the unit may transfer or sell the NO_x allowances that are allocated to such unit. 415 ILCS 5/9.9(d) (1998 State Bar Edition, 1999 Supp.).

The Board has reviewed today's rules, and finds that they comply with the requirements of Section 9.9(d). Specifically, Subpart U satisfies the mandates of Sections 9.9(d)(2) and (4). Subpart X provides the voluntary reduction program required by Section 9.9(d)(3).

Subpart U

Introduction

Together, Subparts U and W compose Illinois' portion of the federal NO_x trading program.[5] Subpart U applies to large non-EGU's and Subpart W applies to

[5] In submitting the NO_x Trading Program as two separate rulemakings, the Agency accommodated two different sets of NO_x emitting sources. The traditional EGUs, those that generate electricity for commercial sale, consented to an "updating allocation system." Tr.1 at 19. Under Subpart W, the allowances available for allocation are gradually reduced, beginning in the fourth year of the program, and the number of allowances allocated is not fixed. See 35 Ill. Adm. Code 217.764. The non-EGUs objected to this allocation method. Tr.1 at 19. Units subject to the requirements of Subpart U "needed to be able to rely on having allowances because they weren't going to be in the business of trading in the market [or] revising the boilers to use low NO_x burners . . . ." *Id*. During negotiations with the Agency, the EGUs consented to the

large EGUs. Both programs cap the total number of allowances the Agency may allocate, and describe how the Agency will allocate those finite allowances. Participation in the federal NO_x trading program allows units subject to the requirements of either Subparts U or W to purchase NO_x emission allowances from any program under the federal NO_x trading program.

The NO_x Trading Program does not cap the emissions of NO_x from any particular source at a fixed level. Rather, the NO_x Trading Program caps the number of allowances available for the Agency to allocate each year. Beginning in the ozone control period for 2004, all units subject to Subparts U or W must hold NO_x emission allowances at least equal to that unit's actual NO_x emissions for that ozone control period. Those allowances can come from several sources: allowances allocated from the NO_x budgets established in Subparts U or W; purchased from those units that receive allocations under either Subpart U or W; transferred from units not subject to Subparts U or W, under the provisions of Subpart X; or purchased from any other unit participating in the federal NO_x trading program. Allowances may be banked, or held over from control period to control period, for the life of the program.

Scope and Affected Facilities

The NO_x Trading Program is a statewide program. The NO_x SIP Call requires "regional-scale reductions in NO_x emissions, and, thereby, reduced transported NO_x and ozone." 63 Fed. Reg. 57,356, 57,359 (1998). Subpart U must apply to all large non-EGUs throughout the state to satisfy this requirement. Appendix E lists the 42 existing non-EGUs that meet the definition of a large non-EGU in Illinois. Exh. 1 at 3-4.

Implementation Date

The trading portion of Subpart U will control emissions of NO_x from large non-EGUs during the ozone control period beginning in 2004. However, pursuant to Section 217.454(e), the requirements of Subpart U will only become effective during the first ozone control period after the year in which: (1) all other states located in USEPA Region 5, or contiguous to Illinois, and subject to the NO_x SIP Call, have

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non-EGU position, so long as the non-EGUs would not be permitted to receive allocations from the EGU portion of the NO_x emission budget. Tr.1 at 19-20. Subpart U incorporates the large non-EGUs into the NO_x Trading Program, but ensures that no unit receiving fixed allowances pursuant to Subpart U will also receive allowances pursuant to Subpart W. Subpart W specifically excluded from the requirements of Subpart W those units receiving allocations under Subpart U in Appendix D. See 35 Ill. Adm. Code 217, Appendix D.

adopted regulations to implement the requirements of the NO_x SIP Call; and (2) USEPA has approved such regulations as part of each state's State Implementation Plan. Should either condition not be met by the 2004 ozone control period, the implementation date for this program must be deferred accordingly.

Applicability

Section 217.454 describes those units subject to the requirements of Subpart U. The definition is rather complex. First, the unit must be a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system, with a maximum design heat input greater than 250 mmbtu/hr. Second, the unit must be listed on Appendix E. A unit can still be subject to the requirements of Subpart U if it is not a unit listed on Appendix E, as long as one of the following is true: (1) the unit never serves a generator producing electricity for sale; (2) the unit serves a generator producing electricity for sale, but such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit; (3) the unit is part of any source listed on proposed Appendix E; or (4) the unit is subject to Subpart W that elects to permanently become subject to Subpart U. Units that meet these conditions are "budget units" subject to Subpart U.

Section 217.454(c) allows any budget unit subject to Subpart U to elect low-emitter status by obtaining a permit with federally enforceable conditions. After the effective date of such a permit, the unit will be subject to only the requirements of Section 217.472. For a discussion of those requirements, see pages 7-8 of this opinion.

Compliance Requirements

Section 217.456 contains the requirements with which the non-EGUs subject to Subpart U must comply. Subsection (a) incorporates generally the federal requirements of the model NO_x trading program in 40 C.F.R. Part 96. Subsection (c) specifically incorporates the federal monitoring requirements of 40 C.F.R. Part 96, Subpart H. Subsection (e) provides the recordkeeping and reporting requirements.

Pursuant to Section 217.456(b), the owner or operator of a unit subject to the requirements of Subpart U must apply for a budget permit. Section 217.458 contains the specific procedure for applying for a budget permit. For example, Section 217.458 fixes the deadlines by which budget units must be apply for permits. Section 217.458 also explains the duties of owners or operators to apply and reapply for a budget permit, as well as the information required in the application.

Section 217.456(d) establishes November 30 of each year as the allowance transfer deadline. By this date, units subject to Subpart U must hold allowances at least equal to that unit's total NO_x emissions for the preceding ozone control period. Each

ton of NO_x emitted in excess of that unit's held allowances constitutes a separate violation of Subpart U and the Act.

NO_x Trading Program

Section 217.460 establishes the actual NO_x trading budget for units subject to the requirements of Subpart U. Subsection (a) sets the initial budget at 4,882 tons of NO_x per ozone control season. Appendix E describes how the budget will initially be allocated. Column four of Appendix E lists the maximum number of allowances each unit may receive from the Agency in any ozone control period. Column five of Appendix E lists the number of allowances each unit will be allocated by the Agency. The difference between Columns four and five reflects the 3% set-aside for new sources.

Sections 217.460(b), (c), and (d) require the Agency to adjust the budget by either: adding allowances for units opting into the program; removing allowances for units opting into the low-emitter status option; or reflecting independent actions of the USEPA. Pursuant to Section 217.460(d), if USEPA adjusts the base Subpart U NO_x Trading Budget, the Agency will adjust the Subpart U NO_x trading budget pro-rata. Pursuant to Section 217.460(e), if USEPA adjusts the Subpart U NO_x Trading Budget as to any individual budget unit, the Agency will only adjust the individual allowance allocation for that unit. Any adjustments to Appendix E by the Agency to match the adjustments of USEPA must comply with the requirements of the Administrative Procedure Act (5 ILCS 100/1-1 et seq. (1998)).

Obtaining Allocations

The rule provides specific provisions describing how the Agency will allocate the 4,882 allowances in the Subpart U NO_x Trading Budget each year. Section 217.466 provides that the Agency will allocate to each unit listed on Appendix E the number of allowances found in Column 5 of Appendix E. Section 217.462(b) allows any unit listed on Appendix E to permanently transfer some or all of its allowances found in Column 5 of Appendix E to any other unit subject to Subparts U or W.

Section 217.468(b) directs the Agency to create a new source set-aside, composed of 3% of the total allowances in the Subpart U NO_x Trading Program, or 146 allowances. New budget units[6] may request to purchase allowances from the new

[6] Pursuant to Section 217.468(a), new budget units in the 2004, 2005, and 2006 ozone control periods are those units that commenced commercial operation on or after January 1, 2000. For the 2007 and later ozone control periods, new budget units are those units that commenced commercial operation no more that three ozone control periods prior to the year an allocation from the new source set-aside is requested.

source set-aside, up to an amount determined pursuant to Section 217.464. The new budget unit must purchase these allowances from the Agency at a price determined pursuant to Section 217.468(g). The Agency will allocate any allowances in the new source set-aside that are not to the units listed on Appendix E pro rata. Column 4 of Appendix E lists the total number of allowances any single unit may receive from the Agency in any single year.

Early Reduction Credits (ERCs)

Section 217.470 allows budget units to request ERCs if they reduce their NO_x emissions 30% or more below their actual NO_x emissions rate for the ozone control period in which ERCs are requested. Account representatives may request ERCs for reductions in the 2001 or 2002 ozone control period, and the 2003 ozone control period if approved by USEPA. ERCs may be used in the 2004 ozone control period, or later periods if approved by USEPA.

While the entire compliance supplement pool available for ERCs is 17,688 allowances, Section 217.470(f)(1) reserves no more than 2,427 allowances for Subpart U units. No more than half of these allowances may be allocated for reductions made in each of the 2001 and 2002 ozone control periods, with the remainder allocated for reductions made in the 2003 ozone control period, if approved by USEPA.

Low-Emitter Status

Units listed on Appendix E may elect low-emitter status pursuant to Section 217.454(c). To do so, the unit must obtain a federally enforceable permit that meets the conditions set forth in Section 217.472(a). The permit must restrict the unit's fuel use and operating hours, limit the unit's potential NO_x emissions, and contain specific monitoring, recordkeeping and reporting requirements.

Once such a permit is issued, the unit will only be subject to the requirements of Section 217.472, and no longer be required to hold NO_x allowances. Pursuant to Section 217.460(c), the Agency will reduce the Subpart U NO_x budget by the number of allowances equal to the amount of NO_x emissions in the unit's federally enforceable permit. The low-emitter unit may still offset its permitted emissions by obtaining allowances issued for voluntary NO_x reductions that meet the requirements of Subpart X. In that case, the Agency will not reduce the Subpart U NO_x budget by the allowances obtained in accordance with Subpart X.

Opt-in Units

Section 9.9(d)(2) of the Act requires the Board to provide a means for emission units to opt into the NO_x Trading Program (415 ILCS 5/9.9(d)(2) (1998) (1998 State

Bar Edition, 1999 Supp.)). Sections 217.474, 217.476, 217.478, 217.480, and 217.482 implement this directive.

Section 217.474 defines which units may opt-in to the NO_x Trading Program, and provides the requirements opt-in units must meet. To be eligible, a unit must first be an operating fossil fuel-fired stationary boiler, combustion turbine, combined cycle system, cement kiln or stationary internal combustion engine. The unit may then qualify if it: is not a budget EGU under Subpart W; vents all of its emissions to a stack; has documented heat input for more than 876 hours in the six months immediately preceding the unit's submission of a budget permit application; is not covered by the retired unit exemption of 40 C.F.R. 96.5; and is not a low-emitter unit under Sections 217.454(c) and 217.472.

Opt-in units must have an account representative. The account representative must apply for a budget permit that meets the requirements of Section 217.458, and also contains provisions for a change in the regulatory status of the unit to an opt-in budget unit under Section 217.454. The account representative must also submit a monitoring plan for the unit in accordance with 40 C.F.R. Part 96, Subpart H.

Section 217.476 describes the process by which the Agency will issue or deny a budget permit to an opt-in unit. In addition to the requirements of Section 217.458, the Agency will also determine the sufficiency of the unit's monitoring plan. If the Agency determines that the unit's monitoring plan is sufficient, the unit must then monitor and report the NO_x emission rate and the heat input of the unit in accordance with 40 C.F.R. Part 96, Subpart H, for one full ozone control period. The information gathered during this time will be used to determine the unit's baseline heat rate and baseline NO_x emission rate.

Once the Agency has issued the permit, and the opt-in unit becomes an opt-in budget unit, Section 217.480 requires the owners or operators of the unit to notify the Agency and USEPA in writing when the opt-in unit becomes an opt-in budget unit. Sections 217.480(c), (d), and (e) describe the procedures USEPA will take to deduct allowances from the opt-in budget unit's compliance account.

Section 217.482 provides the allocation procedures for opt-in budget units. The Agency will allocate allowances in an amount equal to the opt-in budget unit's heat input, determined in accordance with Section 217.482(b), multiplied by the lessor of the opt-in budget unit's baseline NO_x emission rate or the lowest NO_x emissions limitation under State or federal law.

Section 217.478 provides the procedures an opt-in budget unit must follow to withdraw from the NO_x Trading Program. Opt-in budget units may only withdraw outside of the ozone control period, *i.e.* between September 30 and May 1, and must submit a withdrawal request within 90 days of the effective date of the withdrawal.

The opt-in budget unit must also submit an annual compliance certification report in accordance with 40 C.F.R. 96.30. The opt-in budget unit must hold enough allowances to cover its NO_x emissions for the preceding ozone control period. USEPA will also deduct from the opt-in budget unit's account any allowances allocated for the ozone control period for which the withdrawal is to be effective, and earlier ozone control periods. If any allowances remain after these deductions, USEPA will then establish and transfer any remaining allowances to a new general account for use by the owner or operator of the opt-in unit.

If all of the above requirements are met, the Agency will withdraw the opt-in unit's budget permit. Once an opt-in unit withdraws from the NO_x Trading Program, the account representative may not submit another application for a budget permit under Section 217.474(d) until four years after the date the opt-in unit's budget permit was withdrawn.

Subpart X

New Subpart X provides a voluntary emission reduction program to supplement the NO_x allowances available to emission units subject to Subparts U or W. This program is required under Section 9.9(d) of the Act (415 ILCS 5/9.9(d) (1998) (1998 State Bar Edition, 1999 Supp.)). That Section provides in pertinent part that the Board shall:

> (3) provide for voluntary reductions of NO_x emissions from emission units
> . . . to provide additional allowances to EGUs and non-EGUs to be allocated by the Agency. The regulations shall further provide that such voluntary reductions are verifiable, quantifiable, permanent, and federally enforceable. 415 ILCS 5/9.9(d)(3) (1998) (1998 State Bar Edition, 1999 Supp.)).

In support of this voluntary program, the Agency stated its belief that the General Assembly included the last provision of Section 9.9(d)(3) of the Act to ensure that this supplemental program must "comport with the limitations and framework of the SIP Call and the general requirements for approval of a SIP revision." Exh. 3 at 16. The Agency explained that all these elements, "verifiable, quantifiable, and federally enforceable," are necessary to meet both these objectives. *Id*. Therefore, the Agency emphasized that the provisions in Subpart X are intended to satisfy these requirements. Exh. 3 at 16-17.

How to Participate in Subpart X

Subpart X does not directly respond to the NO_x SIP Call. Subpart X does implement Section 9.9(d)(3) of the Act (415 ILCS 5/9.9(d)(3) (1998) (1998 State Bar

Edition, 1999 Supp.)). The intent behind Subpart X is to "transfer NO_x reductions from the non-trading portion of the state budget to the trading portion." Tr.1 at 24.

Because this is a voluntary program, there is no implementation date requirement. However, Section 217.815(a) states that the first ozone control period in which NO_x emission reductions may be credited is 2003. Section 217.840(c)(3) states that allowances shall be issued by the May 1 after the control period in which the NO_x emission reduction has occurred.

Subpart X creates a voluntary program that allows owners or operators of stationary sources to generate additional NO_x allowances for use by units subject to Subparts U or W. Units must first meet the eligibility requirements of Section 217.805. If the unit: discharges through a stack; is fossil fuel-fired; is not subject to the requirements of either Subparts T, U, V, or W; is not a retired unit; and is not a stationary internal combustion engine that emits more than one ton of NO_x per day during the ozone control period, the owner or operator of that unit may submit a proposal to the Agency. Tr.1 at 25-26; Exh. 3 at 17.

Units electing to participate in the Subpart X voluntary NO_x emissions reduction program must comply with the requirements of Section 217.810. Exh. 3 at 18. The owner or operator must submit a proposal that meets the requirement of Section 217.835, submit a baseline determination in accordance with Section 217.820, and monitor and report emissions in accordance with Sections 217.850 and 217.855.

Section 217.835 describes the information that must be submitted in a NO_x emission reduction proposal. The proposal must identify all emission units at the source, whether each unit is subject to Subparts T, U, V, W, or X, and the baseline emissions of each unit subject to the NO_x emission cap. The proposal must also identify the NO_x emission reduction unit, how the reductions will be obtained, the amount of the reductions, all other emission units at the source that will be subject to a NO_x emission cap, and the emission units to which the allowances will be allocated. Tr.1 at 26-27.

In addition, the owner or operator must request an emission cap on other NO_x emissions at the source. The NO_x emission cap is intended to prevent production shifting, where a source could "shut down one [unit] and ratchet up the production of a boiler right next to it, which really wouldn't reduce NO_x emissions in the air shed." Tr.1 at 27. The NO_x emissions cap must include all other NO_x emission units at the source that are not subject to Subparts U or W and are the same type of emission unit as the emission reduction unit. The example provided in Section 217.810(a)(2) is that if the emission reduction unit is a boiler, combined cycle system or turbine, then the NO_x emission cap must include all boilers, combined cycle systems or turbines at the

source that are not subject to Subparts U or W. Section 217.835 provides a method by which like-kind emission units may be exempted from the NO_x emission cap.

The owner or operator must demonstrate how the NO_x emission cap included in the NO_x emission proposal will be determined. Section 217.815 provides three methods: use of NO_x emission reduction technology; a permanent shutdown of the unit after January 1, 1995; or a reduction in the rate or hours of operation. This demonstration must be performed pursuant to Section 217.845. Exh. 3 at 20.

Sections 217.820 and 217.825 describe how a unit's baseline and creditable NO_x emissions will be determined. A unit's NO_x emissions baseline is determined by multiplying the unit's actual 1995 calendar year emissions by 5/12ths. Section 217.820 also provides alternative methods for determining this emissions baseline if the actual 1995 emissions were not reported. To the extent that the unit reduces its emissions below this number, Section 217.825 provides that the Agency will allocate 80% of any actual NO_x emission reductions to the specified Subpart U or W unit. The Agency will retire the remaining 20% for air quality.

Finally, each emission reduction unit at the source must comply, to the extent practicable, with the monitoring requirements of Section 217.850. Section 217.850 requires the use of a continuous emission monitoring systems (CEMS), or an alternative system approved by the Agency and included in the source's federally enforceable permit. Section 217.855 lists the reporting requirements for the information gathered using CEMS, or other Agency approved method.

Once the Agency has received the source's complete NO_x emission reduction proposal, and any emissions data required to verify that the reductions have occurred, Section 217.840 provides that the Agency has 90 days to notify the owner or operator in writing of its decision. The owner or operator of the source may extend this deadline in writing. The Agency's failure to act or a final decision to deny the proposal is appealable to the Board.

The NO_x emission reduction proposal will only be effective after the owner or operator of the emission reduction unit has obtained or modified a permit with federally enforceable conditions. Exh. 3 at 20. The owner or operator must obtain a permit that contains as federally enforceable conditions the commitments in the NO_x emission reduction proposal and the NO_x emission cap. The permit or permit modifications must be obtained no later than the date on which the NO_x emission reductions will commence.

Section 217.865 provides consequences for owners or operators of emission reduction units for which NO_x emission reductions have been recognized under Subpart X, but then have actual NO_x emissions in excess of the emission reduction limit in any

ozone control period for which NO_x allowances have been issued. Such sources must purchase and surrender to the Agency NO_x allowances equal to two to four times the excess NO_x emissions, depending on the number of control periods in which such violations occur. The Agency will retire all surrendered allowances for air quality.

Significant Change from First Notice

The Board made one significant change to Section 217.805, regarding emission unit eligibility. At first notice, Section 217.805(c) limited participation in Subpart X to only those units permitted to operate prior to January 1, 1995 (pre-1995 units). The Agency presented several reasons to support excluding units permitted to operate after January 1, 1995 (post-1995 units) from participating in Subpart X. A number of participants argued that the post-1995 units should be allowed to participate in Subpart X. The Board considered the arguments made in support of both positions and decided to allow post-1995 units to participate in this voluntary program.

The Board concluded that the Agency's reasoning was focused on making Subpart X most acceptable to USEPA, while IERG presented logical reasons as to why allowing post-1995 units to be eligible under Subpart X did not increase the risk that USEPA might find an objection with this rule. The Agency stated that USEPA's main criticism of the rule was the lack of Part 75 monitoring requirements, not a preservation of the growth factor. IERG presented compelling support that emission reductions from post-1995 units could meet the statutory requirements of Section 9.9 of the Act, in that such reductions need be "verifiable, quantifiable, permanent, and federally enforceable" (415 ILCS 5/9.9(d)(3) (1998) (1998 State Bar Edition, 1999 Supp.)). The Board finds that making this change should not adversely affect USEPA's decision to approve this rule.[7]

Part 211

Two definitions are adopted in Part 211. A definition of the "NO_x Trading Program" is added at Section 211.4067. This definition simply states that the NO_x Trading Program includes the requirements of Subparts U and W, and the provisions of the federal NO_x trading program found at 40 C.F.R. Part 96. Also, the definition of "source" at Section 211.6130 is amended. to make it identical to the definition of "source" found in Section 39.5 of the Act (415 ILCS 5/39.5) (1998)).

[7] For a more detailed discussion of this issue, see the Board's second-notice opinion and order. Proposed New 35 Ill. Adm. Code 217.Subpart U, NO_x Control and Trading Program for Specified NO_x Generating Units, Subpart X, Voluntary NO_x Emissions Reduction Program, and Amendments to 35 Ill. Adm. Code 211 (February 15, 2001), R01-17.

TECHNICAL AND ECONOMIC CONSIDERATIONS

Section 27(a) of the Act requires that in promulgating regulations, the Board "shall take into account . . . the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution." 415 ILCS 5/27(a) (1998). The Board first notes that the program established by proposed Subpart X is a voluntary program, and thus the presumption is that NO_x reductions will only be undertaken to the extent that the source believes that such reductions are technically feasible and economically reasonable.

A separate economic reasonableness review was not provided. The analysis is the same as for Subpart U. For those non-EGUs, the Agency estimates that the cost effectiveness of controls will vary from $150--$7,450 per ton of NO_x removed. Exh. 1 at 6. However, this estimate does not include the impact of emission trading. *Id*. USEPA and the Agency estimate that the average cost effectiveness of units subject to the requirements of Subpart U with trading is $1,583 (1999 dollars) per ton of NO_x removed. Exh. 1 at 6-8.

CONCLUSION

The NO_x SIP Call requires that Illinois submit a SIP revision to control the emission of the NO_x during the ozone control period. Sections 9.9(b), (c), and (d) of the Act (415 ILCS 5/9.9(b), (c), and (d) (1998) (1998 State Bar Edition, 1999 Supp.)), require the Board to adopt the NO_x emissions trading program to comply with this federal mandate. The Board believes that these rules represent an equitable and economic method of satisfying these obligations. Therefore, these rules are adopted as final, adding Subparts U and X to 35 Ill. Adm. Code 217, and conforming amendments to 35 Ill. Adm. Code 211.

ORDER

The Board hereby adopts these amendments to 35 Ill. Adm. Code 217. The Board directs the Clerk of the Board to file these adopted rules with the Secretary of State.

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

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AUTHORITY: Implementing Sections 9, 9.1, 9.9 and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9, 9.1, 9.9, 10, 27 and 28.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 201: Definitions, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R74-2 and R75-5, 32 PCB 295, at 3 Ill. Reg. 5, p. 777, effective February 3, 1979; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13590; amended in R82-1 (Docket A) at 10 Ill. Reg. 12624, effective July 7, 1986; amended in R85-21(A) at 11 Ill. Reg. 11747, effective June 29, 1987; amended in R86-34 at 11 Ill. Reg. 12267, effective July 10, 1987; amended in R86-39 at 11 Ill. Reg. 20804, effective December 14, 1987; amended in R82-14 and R86-37 at 12 Ill. Reg. 787, effective December 24, 1987; amended in R86-18 at 12 Ill. Reg. 7284, effective April 8, 1988; amended in R86-10 at 12 Ill. Reg. 7621, effective April 11, 1988; amended in R88-23 at 13 Ill. Reg. 10862, effective June 27, 1989; amended in R89-8 at 13 Ill. Reg. 17457, effective January 1, 1990; amended in R89-16(A) at 14 Ill. Reg. 9141, effective May 23, 1990; amended in R88-30(B) at 15 Ill. Reg. 5223, effective March 28, 1991;

amended in R88-14 at 15 Ill. Reg. 7901, effective May 14, 1991; amended in R91-10 at 15 Ill. Reg. 15564, effective October 11, 1991; amended in R91-6 at 15 Ill. Reg. 15673, effective October 14, 1991; amended in R91-22 at 16 Ill. Reg. 7656, effective May 1, 1992; amended in R91-24 at 16 Ill. Reg. 13526, effective August 24, 1992; amended in R93-9 at 17 Ill. Reg. 16504, effective September 27, 1993; amended in R93-11 at 17 Ill. Reg. 21471, effective December 7, 1993; amended in R93-14 at 18 Ill. Reg. 1253, effective January 18, 1994; amended in R94-12 at 18 Ill. Reg. 14962, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15744, effective October 17, 1994; amended in R94-15 at 18 Ill. Reg. 16379, effective October 25, 1994; amended in R94-16 at 18 Ill. Reg. 16929, effective November 15, 1994; amended in R94-21, R94-31 and R94-32 at 19 Ill. Reg. 6823, effective May 9, 1995; amended in R94-33 at 19 Ill. Reg. 7344, effective May 22, 1995; amended in R95-2 at 19 Ill. Reg. 11066, effective July 12, 1995; amended in R95-16 at 19 Ill. Reg. 15176, effective October 19, 1995; amended in R96-5 at 20 Ill. Reg. 7590, effective May 22, 1996; amended in R96-16 at 21 Ill. Reg. 2641, effective February 7, 1997; amended in R97-17 at 21 Ill. Reg. 6489, effective May 16, 1997; amended in R97-24 at 21 Ill. Reg. 7695, effective June 9, 1997; amended in R96-17 at 21 Ill. Reg. 7856, effective June 17, 1997; amended in R97-31 at 22 Ill. Reg. 3497, effective February 2, 1998; amended in R98-17 at 22 Ill. Reg.11405, effective June 22, 1998; 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 R01-17 at 25 Ill. Reg. _____, effective_____.

BOARD NOTE: This Part implements the Illinois Environmental Protection Act as of July 1, 1994.

SUBPART B: DEFINITIONS

Section 211.4067 NO_x Trading Program

For the purposes of 35 Ill. Adm. Code 217, Subparts U and W, the NO_x Trading Program shall mean the requirements of 35 Ill. Adm. Code 217, Subparts U and W, and those provisions of the federal NO_x Trading Program, 40 CFR 96, incorporated by reference therein.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 211.6130 Source

"Source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties that are under common control of the same person (or persons under common control) and that belongs to a single major industrial grouping. For the purposes of defining "source," a stationary source or group of stationary sources shall be considered part of a single major

industrial grouping if all of the pollutant emitting activities at such source or group of sources located on contiguous or adjacent properties and under common control belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987 (incorporated by reference in 35 Ill. Adm. Code 218.112 and 219.112), *or such pollutant emitting activities at a stationary source (or group of sources) located on contiguous or adjacent properties and under common control constitute a support facility* as defined in Section 39.5 of the Environmental Protection Act [415 ILCS 5/39.5]. *The determination as to whether any group of stationary sources are located on contiguous or adjacent properties, and/or are under common control, and/or whether the pollutant emitting activities at such group of stationary sources constitute a support facility shall be made on a case by case basis* [415 ILCS 5/39.5].

(Source: Amended at 25 Ill. Reg._____, effective_____)

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

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SUBPART W: NO_x TRADING PROGRAM FOR ELECTRICAL GENERATING UNITS

SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

Appendix C Compliance Dates
Appendix D Non-Electrical Generating Units
Appendix E Large Non-Electrical Generating Units
Appendix F Allowances for Electrical Generating Units

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].

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._____, effective_____.

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

Section 217.450 Purpose

The purpose of this Subpart is to cap the emissions of nitrogen oxides (NO_x) during the ozone control period from units subject to the provisions of this Subpart (budget units) by determining source allocations and by implementing the federal NO_x Trading Program, 40 CFR 96, consistent with the provisions of this Subpart.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.452 Severability

If any Section, subsection or clause of this Subpart is found invalid, such finding shall not affect the validity of this Subpart as a whole or any Section, sentence or clause not found invalid.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.454 Applicability

a) This Subpart applies to any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system, with a maximum design heat input greater than 250 mmbtu/hr and that is:

1) A unit listed in Appendix E of this Subpart, irrespective of any subsequent changes in ownership, unit designation, or name of the unit; or

2) A unit not listed in Appendix E of this Subpart that:

A) At no time serves a generator producing electricity for sale;

B) At any time serves a generator producing electricity for sale, if such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit. Fifty percent of a unit's potential electrical output capacity shall be determined by multiplying the unit's maximum design heat input by 0.0488 MWe/mmbtu. If the size of the generator is smaller than this calculated number, the unit is subject to the provisions of this Subpart, but if the size of the generator is greater than this calculated number, the unit is subject to the provisions of Subpart W of this Part;

C) Is part of any source, as that term is defined in 35 Ill. Adm. Code Section 211.6130, listed in Appendix E of this Part; or

D) Is a unit subject to Subpart W of this Part (excluding any unit listed in Appendix F of this Part, regardless of any change in ownership or any change of operator), and the owner or operator makes a permanent election, at the time of applying for a budget permit pursuant to this Part, to subject the unit to the requirements of this Subpart rather than Subpart W of this Part. Any unit for which such an election is made will not receive an allocation from the Subpart U or Subpart W NO_x Trading Budget.

b) Those units that meet the above criteria and are subject to the NO_x Trading Program emissions limitations contained in this Subpart are budget units.

c) Low-emitter status: Notwithstanding subsection (a) of this Section, the owner or operator of a budget unit subject to the requirements of subsection (a) of this Section may elect low-emitter status by obtaining a permit with federally enforceable conditions that meet the requirements of Section 217.472(a). Starting with the effective date of such permit, the unit shall be subject only to the requirements of Section 217.472.

d) The owner or operator of any budget unit not listed in Appendix E of this Part but subject to this Subpart shall not receive an allocation of NO_x allowances from the Subpart U or Subpart W NO_x Trading Budget, except for any allowance from the new source set-aside in accordance with Section 217.468 of this Subpart. Such unit must acquire NO_x allowances in an amount not less than the NO_x emissions from such budget unit during the control period (rounded to the nearest whole ton) in accordance with the federal NO_x Trading Program, Subpart X of this Part or pursuant to a permanent transfer of NO_x allocations pursuant to Section 217.462(b) of this Subpart.

e) Notwithstanding any other provisions of this Subpart, a source and units at the source subject to the provisions of subsection (a) of this Section will become subject to this Subpart on *the first day of the control season subsequent to the calendar year in which all of the other states subject to the provisions of the NO_x SIP Call* (63 Fed. Reg. 57355 (October 27, 1998)) *that are located in USEPA Region V or are that contiguous to Illinois have adopted regulations to implement NO_x trading programs and other required reductions of NO_x emissions pursuant to the NO_x SIP Call, and such regulations have received final approval by USEPA as part of the respective states' SIPs for ozone, or a final FIP for ozone promulgated by USEPA is effective*. [415 ILCS 5/9.9(f)]

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.456 Compliance Requirements

All budget units subject to the requirements of this Subpart must comply with the following:

a) The requirements of this Subpart and 40 CFR 96, excluding 40 CFR 96.4(b), 96.55(c) and subparts C, E, and I, as incorporated by reference in Section 217.104 of this Part. To the extent that this Subpart contains provisions which are inconsistent with any provisions of 40 CFR 96, the owner or operator of budget units subject to this Subpart shall comply with the provisions of this Subpart in lieu of those provisions which were incorporated by reference.

b) Budget permit requirements:

1) The owner or operator of each source with one or more budget units at the source subject to this Subpart must submit a complete permit application for a budget permit in accordance with the

provisions of Section 217.458(a)(4), (a)(5) or (a)(6), as applicable, to be issued by the Agency with federally enforceable conditions covering the NO_x Trading Program (budget permit), and that complies with the requirements of Section 217.458 of this Subpart.

2) The owner or operator of one or more budget units subject to this Subpart must operate each such budget unit in compliance with such budget permit or complete budget permit application, as applicable.

3) The owner or operator of one or more budget units subject to this Subpart, at the time of filing an application for a permit under this Section, must submit a complete application for either a permit incorporating a source-wide overdraft account (as such term is defined in 40 CFR 96.2), or a permit incorporating unit specific compliance accounts for each budget unit at the source subject to this Subpart. Such election shall be at the sole discretion of the owner or operator of the source and the Agency shall incorporate such election into a permit issued to the source pursuant to this Subpart.

c) Monitoring requirements:

1) For budget units subject to the requirements of this Subpart, and which commence operation on and after January 1, 2000, the owner or operator of each such budget unit at the source must comply with the monitoring requirements of 40 CFR 96, subpart H. The account representative of each such budget unit at the source shall comply with those sections of the monitoring requirements of 40 CFR 96, subpart H, applicable to an account representative.

2) The compliance of each budget unit subject to the requirements of subsection (c)(1) or subsection (c)(3)(A) of this Section with the control period NO_x emissions limitation under subsection (d) of this Section shall be determined by the emissions measurements recorded and reported in accordance with 40 CFR 96, subpart H.

3) For budget units which commenced operation prior to January 1, 2000:

A) The owner or operator of each such budget unit at the source

must comply with the requirements of 40 CFR 96, subpart H; or

B) If the monitoring requirements of 40 CFR 96, subpart H, are demonstrated by the source to be technically infeasible as applied to a budget unit subject to the requirements of this Subpart, the owner or operator of such budget unit may monitor by an alternative monitoring procedure for the budget unit approved by the Agency and the Administrator of USEPA pursuant to the provisions of 40 CFR 75, subpart E. Such alternative monitoring procedures must be contained as federally enforceable conditions in the unit's permit.

4) The compliance of each budget unit subject to the requirements of subsection (c)(3)(B) of this Section shall be determined by the emissions measurements recorded and reported in accordance with the federally enforceable conditions in the budget unit's permit addressing monitoring as required by subsection (c)(3)(B) of this Section.

d) Allowance requirements:

1) As of November 30 of each year, the allowance transfer deadline, the account representative of each source subject to the requirements of this Subpart must hold allowances available for compliance deductions under 40 CFR 96.54 for each budget unit at the source subject to this Subpart in the budget unit's compliance accounts, or the source's overdraft account. The number of allowances held in these accounts shall not be less than the total NO_x emissions for the control period (rounded to the nearest whole ton), as determined in accordance with subsection (c) of this Section, plus any number of allowances necessary to account for actual utilization (e.g., for testing, start-up, malfunction, and shut down) under 40 CFR 96.42(e) for all budget units at the source subject to this Subpart. Compliance with this provision shall be demonstrated if, as of the allowance transfer deadline, the sum of the allowances available for compliance deductions for all budget units at the source subject to this Subpart is equal to or greater than the total NO_x emissions (rounded to the nearest whole ton) from all budget units at the source subject to this Subpart.

2) Allowances shall be held in, deducted from, or transferred among

allowance accounts in accordance with this Subpart and 40 CFR 96, subparts F and G.

3) Each ton of NO_x emitted by a source with one or more budget units subject to this Subpart in any control period in excess of the NO_x allowances held by the owner or operator for each budget unit at the source subject to this Subpart for each control period shall constitute a separate violation of this Subpart and the Act.

4) In order to comply with the requirements of subsection (d)(1) of this Section, an allowance may not be utilized for a control period in a year prior to the year for which the allowance was allocated.

5) An allowance allocated by the Agency or USEPA under the NO_x Trading Program is a limited authorization to emit one ton of NO_x. No provision of the NO_x Trading Program, any permit issued or permit application submitted pursuant to this Subpart, or an exemption under 40 CFR 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit this authorization.

6) An allowance allocated by the Agency or USEPA under the NO_x Trading Program or pursuant to this Subpart does not constitute a property right.

7) Upon recordation by USEPA under 40 CFR 96, subpart F or G, every allocation, transfer, or deduction of an allowance to or from a budget unit's compliance account or to or from the source's general or overdraft account where the budget unit is located is deemed to amend automatically and become a part of any budget permit of the budget unit. This automatic amendment of the budget permit shall occur by operation of law and will not require any further review.

e) Recordkeeping and reporting requirements:

1) Unless otherwise provided, the owner or operator of a source subject to the requirements of this Subpart must keep at the source each of the documents listed in subsections (e)(1)(A) through (e)(1)(D) of this Section for a period of 5 years from the date the document is created. This period may be extended for cause at any time prior to the end of 5 years in writing by the Agency or USEPA.

A) The account certificate of representation for the account representative for the source and each budget unit at the source subject to the requirements of this Subpart and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 40 CFR 96.13, provided that the certificate and such supporting documents must be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new account certificate of representation changing the account representative.

B) All emissions monitoring information, in accordance with subsection (c) of this Section, provided that to the extent that
40 CFR 96, subpart H, provides for a three-year period for recordkeeping, the three-year period shall apply.

C) Copies of all reports, compliance certifications, and other submissions and all records made or required under this Subpart or the NO_x Trading Program or documents necessary to demonstrate compliance with the requirements of this Subpart or the NO_x Trading Program.

D) Copies of all documents used to complete a budget permit application and any other submission under this Subpart or under the NO_x Trading Program.

2) The account representative of a source and each budget unit at the source subject to the requirements of this Subpart must submit to the Agency and USEPA the reports and compliance certifications required under this Subpart and the NO_x Trading Program, including those under 40 CFR 96, subparts D and H.

f) Liability:

1) No revision of a budget permit shall excuse any violation of the requirements of the NO_x Trading Program or this Subpart that occurs prior to the date that the revision under such budget permit takes effect.

2) Each budget source and each budget unit at the source shall meet the requirements of the NO_x Trading Program.

3) Any provision of this Subpart or the NO_x Trading Program that applies to a source subject to the requirements of this Subpart (including a provision applicable to the account representative of the source) shall also apply to the owner and operator of such source and to the owner and operator of the budget units subject to the requirements of this Subpart at the source.

4) Any provision of this Subpart or the NO_x Trading Program that applies to a budget unit subject to the requirements of this Subpart (including a provision applicable to the account representative of such budget unit) shall also apply to the owner and operator of such budget unit. Except with regard to the requirements applicable to budget units with a common stack under 40 CFR 96, subpart H, the owner and operator and the account representative of one budget unit shall not be liable for any violation by any other budget unit of which they are not an owner or operator or the account representative and that is located at a source of which they are not an owner or operator or the account representative.

5) Excess emissions requirements: The account representative of a source that has excess emissions in any control period shall surrender the allowances as required for deduction under 40 CFR 96.54(d)(1).

6) The owner or operator of a budget EGU that has excess emissions in any control period shall pay any fine, penalty, or assessment or comply with any other remedy imposed under 40 CFR 96.54(d)(3) and the Act.

g) Effect on other authorities: No provision of this Subpart, the NO_x Trading Program, a budget permit application, a budget permit, or a retired budget unit exemption under 40 CFR 96.5 shall be construed as exempting or excluding the owner or operator and, to the extent applicable, the account representative of a source or budget unit from compliance with any other regulations promulgated under the CAA, the Act, an approved State implementation plan, or a federally enforceable permit.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.458 Permitting Requirements

a) Budget permit requirements:

1) The owner or operator of each source with one or more budget units subject to this Subpart is required to timely submit, in accordance with subsection (a)(4), (a)(5), or (a)(6) of this Section, as applicable, a complete permit application addressing all requirements of this Subpart applicable to such budget units.

2) Each budget permit (including a draft or proposed budget permit, if applicable) shall contain federally enforceable conditions addressing all applicable requirements of the NO_x Trading Program and requirements of this Subpart and shall be a complete and segregable portion of the source's entire permit.

3) No budget permit will be issued, and no NO_x allowance account will be established for any budget unit subject to this Subpart, until the Agency and USEPA have received a complete account certificate of representation under 40 CFR 96, subpart B, for an account representative of the source and each budget unit at the source subject to this Subpart.

4) For any budget unit subject to this Subpart that commenced operation before November 1, 2003, and for which a CAAPP permit is not required pursuant to Section 39.5 of the Act, the owner or operator of such budget unit must submit a budget permit application meeting the requirements of this Subpart on or before November 1, 2003.

5) For any budget unit subject to this Subpart that commenced operation before August 1, 2003, and for which a CAAPP permit is required pursuant to Section 39.5 of the Act, the owner or operator of such budget unit must submit a budget permit application meeting the requirements of this Subpart on or before August 1, 2003.

6) For any budget unit subject to this Subpart that is subject to Section 39.5 of the Act and that commences operation on or after August 1, 2003, and for any budget unit subject to this Subpart and not subject to Section 39.5 of the Act that commences operation on or after November 1, 2003, the owner or operator of such budget units must submit applications for construction and operating permits pursuant to the requirements of Sections 39 and 39.5 of the Act and 35 Ill. Adm. Code 201 and such applications must specify that they are applying for budget

permits, and must address the budget permit application requirements of this Subpart.

b) Budget permit applications:

1) Duty to apply: The owner or operator of any source with one or more budget units subject to this Subpart must submit to the Agency one or more complete budget permit applications under subsection (b)(2) of this Section for such budget units by the applicable deadline in subsection (a)(4), (a)(5), or (a)(6) of this Section. The owner or operator of any source with such budget units must reapply for a budget permit as required by this Subpart, and 35 Ill. Adm. Code 201 and Sections 39 and 39.5 of the Act.

2) Information requirements for budget permit applications: A complete budget permit application must include the following elements concerning the budget units for which the application is submitted:

A) Identification of the source, including plant name. The ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration must also be included, if applicable;

B) Identification of each fossil fuel-fired combustion turbine, stationary boiler or combined cycle system budget unit at the source;

C) An explanation why each budget unit is subject to the requirements of Section 217.454 of this Subpart; and

D) The compliance requirements of Section 217.456 of this Subpart.

3) Federally enforceable status of budget permit: An application for a budget permit shall be treated as a modification of the source's existing federally enforceable permit, if such permit has been issued for the source, and shall be subject to the same procedural requirements as the original application. When the Agency issues a budget permit, it shall be incorporated into and become a segregable part of the source's existing federally enforceable permit.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.460 Subpart U NO_x Trading Budget

a) The initial NO_x allowances available for allocation for each control period (the Subpart U NO_x Trading Budget) for budget units subject to the provisions of this Subpart shall be 4,882 tons per control period, subject to adjustment in accordance with subsections (b), (c) and (d) of this Section, and subject to the new source set-aside for budget units subject to this Subpart, as set forth in Sections 217.462 and 217.464 of this Subpart. The Subpart U NO_x Trading Budget shall be initially allocated as set forth in Appendix E of this Part.

b) The Agency may adjust the Subpart U NO_x Trading Budget available for allocations in subsection (a) of this Section by adding allowances for budget units subject to this Subpart opting to become subject to this Subpart pursuant to the requirements for opt-in units in Sections 217.474 and 217.476 of this Subpart.

c) The Agency shall adjust the Subpart U NO_x Trading Budget available for allocations in subsection (a) of this Section to remove allowances from units opting to become exempt pursuant to the requirements for low-emitters in Sections 217.454(c) and 217.472 of this Subpart.

d) Except as set forth in subsection (e) of this Section, if USEPA adjusts the base Subpart U NO_x Trading Budget of 4,882 allowances, the Agency will adjust the Subpart U NO_x Trading Budget pro-rata.

e) If USEPA adjusts the Subpart U NO_x Trading Budget as to any individual budget unit, the Subpart U NO_x Trading Budget shall not be adjusted pro-rata, and only the allowance allocation for that budget unit will be adjusted.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.462 Methodology for Obtaining NO_x Allocations

a) Appendix E of this Part identifies the sources with existing budget units subject to this subpart and the number of NO_x allowance allocations that each such budget unit is eligible to receive each control period, subject to adjustment in accordance with Section 217.460 of this subpart and for transfers made in accordance with subsection (b) of this section. Each named budget unit's allocation will be adjusted proportionally based on

the adjusted Subpart U NO_x Trading Budget as provided by Section 217.460 of this Subpart.

b) The owner or operator of budget units subject to this Subpart may permanently transfer all or part of their allocation of allowances pursuant to Column 5 of Appendix E of this part, subject to adjustment in accordance with this Subpart, to another budget unit subject to this Subpart, or to a budget unit subject to Subpart W of this Part. Such transfer will be effective by submitting a written request to the Agency that is signed by the account representative for the transferring budget unit and containing the account number for the recipient budget unit. The owner or operator of budget units subject to this Subpart may not permanently transfer all or part of the new source set-aside indicated as the difference between Column 4 and Column 5 of Appendix E of this Part.

c) Subject to adjustment in accordance with this Subpart, or revocation or revision of the federal NO_x Trading Program or this Subpart, allocations pursuant to Appendix E of this Part exist for the life of the program, including all or a portion of any allocation transferred to another budget unit pursuant to the provisions of this Subpart.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.464 Methodology for Determining NO_x Allowances from the New Source Set-Aside

a) The methodology for calculating the allowances available to be allocated to new budget units subject to this Subpart from the new source set-aside is based on the more stringent emission rate of 0.15 lbs/mmbtu or the permitted NO_x emission rate, but not less than 0.055 lbs/mmbtu.

b) The general equation for determining allowances is:

$$A = \frac{HI \times ER}{2000}$$

Where HI = heat input (in mmbtu/control period) as determined in accordance with subsection (c) of this Section.

Where ER = The NO_x emission rate in lbs/mmbtu as determined in accordance with subsection (a) of this Section.

Where A = allowances of NO_x/control period.

c) The projected heat input shall be determined as set forth below, divided by 2000 lbs/ton:

1) For "new" budget units subject to this Subpart that have seasonal heat input from at least 3 control periods prior to the allocation year, the average of the budget unit's 2 highest seasonal heat inputs from the control periods 1 to 3 years prior to the allocation year;

2) For "new" budget units subject to this Subpart that have seasonal heat input from only 2 control periods prior to the allocation year, the average of the budget unit's seasonal heat inputs from the control periods 1 and 2 years prior to the allocation year;

3) For "new" budget units subject to this Subpart that have seasonal heat input from only the control period prior to the allocation year, the heat input from that control period; or

4) For "new" budget units subject to this Subpart that have not operated for at least 77 days of the control period prior to the allocation year, the budget unit's maximum design heat input for the control period as designated in the construction permit.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.466 NO_x Allocations Procedure for Subpart U Budget Units

For each control period, the Agency will allocate the total number of NO_x allowances in the Subpart U NO_x Trading Budget apportioned to budget units under Section 217.460 of this Subpart, subject to adjustment as provided in this Subpart. These allocations will be issued as provided in subsections (a) and (b) of this Section, as follows:

a) The Agency will allocate to each budget unit that is listed in Appendix E of this Part the number of allowances listed in Column 5 of Appendix E of this Part for that budget unit for each 3-year period of the program. The Agency will report these allocations to USEPA by March 1 of 2004, and triennially thereafter.

b) The Agency will allocate allowances from the new source set-aside to "new" budget units as set forth in Section 217.468 of this Subpart.

c) The Agency will report allocations from the new source set-aside to USEPA by April 1 of each year for the following year.

d) To the extent that allowances remain in the new source set-aside after any allocation pursuant to subsection (b) of this Section, the Agency shall allocate any such remaining allowances pro-rata to the owner or operator of the budget units listed in Appendix E of this Part to the extent a whole allowance may be allocated to any such owner or operator. The Agency will make such allocation by April 15 of each year. If there are insufficient allowances to allocate a whole allowance to any such owner or operator of a budget unit listed in Appendix E of this Part, such allowances shall be retained by the Agency in the new source set-aside. Any such allowances retained in the new source set-aside shall be accumulated in the new source set-aside and may either:

1) Be available for allocation to new budget units for future control periods, subject to the provisions of Section 217.468 of this Subpart; or

2) If, after any annual allocation to new budget units, there are sufficient allowances accumulated in the new source set-aside to allocate one or more whole allowances to the owner or operator of existing budget units listed in Appendix E of this Part on a pro-rata basis, such accumulated whole allowances shall be allocated pro-rata to such owner or operators.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.468 New Source Set-Asides for “New” Budget Units

a) For the 2004, 2005 and 2006 control periods, a "new" budget unit is one that commenced commercial operation on or after January 1, 2000. For the 2007 and later control periods, a "new" budget unit is one that commenced commercial operation no more than 3 control periods prior to the year the allocation is requested pursuant to this Section. Those units that commenced commercial operation on or after January 1, 2000, but before May 31, 2004, become "existing" budget units on October 1, 2004. Those units that commenced commercial operation on or after May 31, 2004, become "existing" budget units the end of the third control period after they commenced commercial operation.

b) "New" budget units must have an allowance for every ton of NO_x emitted during the control period as provided in Section 217.456(d) of this Subpart.

c) The Agency will establish a new source set-aside for each control period from which "new" budget units may purchase NO_x allowances. Each new source set-aside will be allocated allowances equal to 3% of each source's initial total Subpart U NO_x Trading Budget allocation as reflected in Column 5 of Appendix E of this Part, which is 146 allowances, for each control period. The allocation for the new source set-aside from each source shall be based on 3% of the source's initial allocation, without regard to subsequent adjustment to any such source's current allocation, including permanent transfer of allowances to another source or revision of the Subpart U NO_x Trading Budget by USEPA.

d) A "new" budget unit may request to purchase from the Agency a number of allowances that is not more than the number of allowances for which it is eligible, as determined in Section 217.464 of this Subpart, and subject to the provisions of this Section.

e) The account representative of a "new" budget unit under subsection (a) of this Section may purchase allowances from the new source set-aside by submitting to the Agency a request, in writing or in a format specified by the Agency, to be allocated allowances for the current control period from the new source set-aside. The allocation request for each applicable control period must be submitted after the date on which the Agency issues a construction permit to the "new" budget unit and before February 1 of the control period for which the allocation is requested.

f) The Agency will notify the account representative by March 1 of the applicable year of the number of allowances that are eligible for purchase for the "new" budget unit pursuant to the requirements of this Section. If the Agency does not receive payment by March 15 of the applicable year, the account representative will forfeit his/her eligibility to purchase the allowances offered. The Agency will make available for purchase those forfeited allowances on a pro-rata basis to "new" budget units requesting allocations pursuant to this Section, up to the number of allowances requested by each account representative. Such additional allocations are subject to the purchase requirements of subsection (g) of this Section.

g) The price of allowances from the new source set-aside shall be:

1) For 2004 only, the price shall be the average price at which NO_x allowances were traded in 2003 in the Ozone Transport Region; and

2) For all years other than 2004, the average price at which NO_x allowances were traded in the interstate NO_x Trading Program for the preceding control period.

h) The fees collected by the Agency from the sale of allowances will be distributed pro-rata to budget units receiving allowances pursuant to Appendix E of this Part on the basis of allocated allowances, subject to Agency administrative costs assessed pursuant to Section 9.9 of the Act.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.470 Early Reduction Credits (ERCs) for Budget Units

If a budget unit reduces its NO_x emission rate as required by the applicable provisions of subsection (c) of this Section in the 2001 or 2002 control period, or if approved by USEPA the 2003 control period, for use in 2004 control period, or later control periods authorized by USEPA, the account representative may request early reduction credits (ERCs) for such reductions, and the Agency will allocate ERCs to the budget unit in accordance with the following:

a) Each budget unit for which the account representative requests any ERCs under subsection (d) of this Section must monitor NO_x emissions in accordance with 40 CFR 96, subpart H, as incorporated by reference in Section 217.104 of this Part, starting with the control period prior to the control period for which ERCs will first be requested and for each control period for which ERCs will be requested. For example, if ERCs are requested for reductions made in the 2001 control period, the budget unit must have implemented the applicable monitoring for the 2000 control period. The budget unit's monitoring system availability must be at least 90 % during the control period prior to the control period in which the NO_x emissions reduction is made and the budget unit must be in compliance with any applicable State or federal emissions or emissions-related requirements.

b) The NO_x emission rate and heat input under subsections (c) through (e) of this Section shall be determined in accordance with 40 CFR 96, subpart H.

c) Each budget unit for which ERCs are requested under subsection (d) of this Section must have reduced its NO_x emission rate for each control period for which ERCs are requested by 30% or more below the actual NO_x emissions rate (lbs/mmbtu) for the first control period in which ERC's are requested.

d) The account representative of a budget unit that meets the requirements of subsections (a) through (c) of this Section may submit to the Agency a request for ERCs for the budget unit based on NO_x emission rate reductions made by the budget unit in control periods 2001, 2002 and 2003.

1) The number of ERCs that may be requested for any applicable control period shall be an amount equal to the budget unit's heat input for such control period multiplied by the difference between the budget unit's NO_x emission rate (meeting the requirements of subsection (c) of this Section for the applicable control period) and the budget unit's actual NO_x emission rate for the applicable control period, divided by 2000 lbs/ton, and rounded to the nearest ton;

2) Upon request of the account representative, the ERC allowance allocation for a particular budget unit may be deposited in the source's overdraft account rather than in the budget unit's compliance account; and

3) The early reduction request must be submitted by November 1 for reductions made in the previous control period, in a format specified by the Agency.

e) In the event that the May 31, 2004 date for implementing the NO_x SIP Call is delayed, the early reduction request must be submitted in accordance with any rulemaking or guidance by USEPA on the distribution of the Compliance Supplement Pool under the NO_x SIP Call, 63 Fed. Reg.57356 (October 27, 1998).

f) The Agency will allocate ERCs to the budget units meeting the requirements of subsections (a) through (c) of this Section and covered by ERC requests meeting the requirements of subsection (d) of this Section in accordance with the following procedures:

1) The Agency shall allocate no more than 2,427 ERCs over three years, as follows:

A) Not more than one-half of the total ERC allowances for reductions made in the control period in 2001;

B) Not less than one-half of the total ERC allowances for reductions made in the control period in 2002; and

C) If approved by USEPA, any ERC allowances not allocated pursuant to subsection (f)(1)(A) or (B) of this Section, for reductions made in the control period in 2003.

2) If the number of ERC allowances requested for a reduction achieved in any control period is less than or equal to the number of ERC allowances designated for that control period in subsection (f)(1) of this Section, the Agency will allocate one allowance for each accepted ERC request; and

3) If the number of ERC allowances requested for a reduction achieved in any control period is greater than the number of ERC allowances designated for that control period in subsection (f)(1) of this Section, the Agency will allocate allowances for accepted requests on a pro-rata basis.

g) By April 1, the Agency will notify the account representative submitting an ERC request for the subsequent control period of the number of ERC allowances that will be allocated to each budget unit for that control period.

h) By May 1, 2004, the Agency will submit to USEPA the ERC allocations made by the Agency under this Section. USEPA will record such allocations to the extent that they are consistent with the requirements of this Section.

i) ERC allowances recorded under subsection (h) of this Section may be deducted under 40 CFR 96.54, as incorporated by reference in Section 217.104 of this Part, for the control period in 2004 or such control periods as may be specified by USEPA. Notwithstanding 40 CFR 96.55(a), USEPA will deduct as retired any ERC allowances that are not deducted for compliance in accordance with 40 CFR 96.54 for the control period in 2004 or such control periods as may be specified by USEPA.

j) ERC allowances are treated as banked allowances in 2004 for the purposes of 40 CFR 96.55(a) and (b).

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.472 Low-Emitter Requirements

Starting with the effective date of the permit referred to in Section 217.454(c), the budget unit electing low-emitter status shall be subject only to the requirements of this Section.

a) For each control period the owner or operator elects low-emitter status, the federally enforceable permit conditions must:

1) Restrict the unit to burning only natural gas, fuel oil, or natural gas and fuel oil;

2) Limit the unit's potential NO_x mass emissions for the control period to 25 tons or less;

3) Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions;

4) Require that the unit's potential NO_x mass emissions shall be calculated by using the monitoring provisions of 40 CFR 75, or if the unit does not rely on these monitoring provisions, as follows:

A) Select the applicable default NO_x emission rate: 0.7 lbs/mmbtu for combustion turbines burning natural gas exclusively during the control period; 1.2 lbs/mmbtu for combustion turbines burning any fuel oil during the control period; 1.5 lbs/mmbtu for boilers burning natural gas exclusively during the control period; or 2 lbs/mmbtu for boilers burning any fuel oil during the control period.

B) Multiply the default NO_x emission rate under subsection (a)(4)(A) of this Section by the unit's maximum rated hourly heat input which is the higher of the manufacturer’s maximum rated hourly heat input or the highest observed hourly heat input. The owner or operator of the unit may request in the permit application required by this subsection that the Agency use a lower value for the unit's maximum rated hourly heat input. The Agency may approve such lower value if the owner or operator demonstrates that the maximum hourly heat

input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative. The owner or operator must demonstrate that such lower value is representative of the unit's current capabilities because modifications have been made to the unit that permanently limit the unit's capacity;

5) Require that for 5 years at the source that includes the unit, records demonstrating that the operating hours restriction, the fuel use restriction and the other requirements of the permit related to these restrictions were met; and

6) Require that the owner or operator of the unit report to the Agency for each control period the unit's hours of operation (treating any partial hour of operation as a whole hour of operation), heat input and fuel use by type. This report shall be submitted by November 1 of each year the unit elects low-emitter status.

b) The Agency will notify the USEPA in writing of each unit electing low-emitter status pursuant to the requirements of subsection (a) of this Section and when any of the following occurs:

1) The permit with federally enforceable conditions that includes the restrictions in subsection (a) of this Section is issued by the Agency;

2) Such permit is revised to remove any such restriction;

3) Such permit includes any such restriction that is no longer applicable; or

4) The unit does not comply with any such restriction.

c) The unit shall become subject to the requirements of this Subpart if, for any control period under this Section, the fuel use restriction or the operating hours restriction under subsection (a) of this Section is removed from the unit's permit or otherwise is no longer applicable, or the unit does not comply with the fuel use restriction or the operating hours restriction under subsection (a) of this Section. Such unit shall be treated as commencing operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

d) The owner or operator of a unit to which the Agency has ever allocated allowances under Appendix E of this Part may elect low-emitter status. In that case, the Agency will reduce the Subpart U NO_x budget by the number of allowances equal to the amount of NO_x emissions the unit is permitted to emit during the control period, pursuant to a federally enforceable condition in the unit's permit. The owner or operator of a unit electing low-emitter status may demonstrate that it holds sufficient allowances to cover the unit's NO_x emissions by offsetting the emissions from such unit, not to exceed its permitted emission limit as included in its federally enforceable permit, with allowances issued for voluntary NO_x reductions meeting the requirements of Subpart X of this Part. The Agency will not reduce the Subpart U NO_x budget by the allowances issued for NO_x reductions obtained in accordance with Subpart X of this Part.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.474 Opt-In Units

a) Any operating fossil fuel-fired stationary boiler, combustion turbine, combined cycle system, cement kiln or stationary internal combustion engine in the State may qualify under this Subpart to become an opt-in budget unit if it:

1) Is not a budget EGU under Subpart W of this Part;

2) Vents all of its emissions to a stack;

3) Has documented heat input for more than 876 hours in the six months immediately preceding the submission of an application for an initial budget permit under subsection (d) of this Section;

4) Is not covered by a retired unit exemption under 40 CFR 96.5; and

5) Is not covered by the low-emitter exemption under Section 217.454(c) of this Subpart.

b) Except as otherwise provided in this Subpart, an opt-in budget unit shall be treated as a budget unit for purposes of applying this Subpart and 40 CFR 96.

c) Authorized Account Representative:

1) If an opt-in unit is located at the same source as one or more budget units, it shall have the same account representative as those budget units.

2) If the opt-in unit is not located at the same source as one or more budget units, the owner or operator of the opt-in unit shall submit a complete account certificate of representation under 40 CFR 96.13.

d) To apply for a budget permit, the account representative of a unit meeting the qualifications of subsection (a) of this Section must, except as provided under Section 217.478(f) of this Subpart, submit to the Agency:

1) A budget permit application for the unit that:

A) Meets the requirements under Section 217.458 of this Subpart; and

B) Contains provisions for a change in the regulatory status of the unit to an opt-in budget unit under Section 217.454 of this Subpart pursuant to the provisions of Section 217.480(b) of this Subpart.

2) A monitoring plan for the unit in accordance with 40 CFR 96, subpart H.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.476 Opt-In Process

The Agency will issue or deny a budget permit for an opt-in unit in accordance with Section 217.458 of this Subpart and the following:

a) The Agency will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a budget permit for an opt-in unit. A monitoring plan is sufficient, for purposes of interim review, if the plan contains information demonstrating that the NO_x emission rate and heat input of the unit are monitored and reported in accordance with 40 CFR 96, subpart H. A determination of sufficiency shall not be construed as acceptance or approval of that unit's monitoring plan.

b) If the Agency determines that the unit's monitoring plan is sufficient under subsection (a) of this Section and after completion of the monitoring system certification under 40 CFR 96, subpart H, the NO_x emission rate and the heat input of the unit shall be monitored and reported in accordance with 40 CFR 96, subpart H, for one full control period during which the monitoring system availability is not less than 90% and during which the unit is in full compliance with any applicable State or federal emissions or emissions-related requirements.

c) Based on the information monitored and reported under subsection (b) of this Section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmbtu) for the control period, and the unit's baseline NO_x emission rate shall be calculated as the unit's total NO_x emissions (in lbs) for the control period divided by the unit's baseline heat rate.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.478 Opt-In Budget Units: Withdrawal from the NO_x Trading Program

a) Requesting withdrawal: To withdraw from the NO_x Trading Program, the account representative of an opt-in budget unit shall submit to the Agency a request to withdraw from the NO_x Trading Program and to withdraw the budget permit effective as of a specified date between (and not including) September 30 and May 1. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

b) Conditions for withdrawal: Before an opt-in budget unit may withdraw from the NO_x Trading Program and the budget permit may be withdrawn under this Section, the following conditions must be met:

1) For the control period immediately before the withdrawal is to be effective, the account representative must submit to the Agency an annual compliance certification report in accordance with 40 CFR 96.30.

2) If the opt-in budget unit has excess emissions for the control period immediately before the withdrawal is to be effective, USEPA has deducted from the opt-in budget unit's compliance account, or the overdraft account of the NO_x budget source where the opt-in budget unit is located, the number of allowances required in accordance with 40 CFR 96.54(d) for the control period.

3) After the requirements for withdrawal under subsections (b)(1) and (2) of this Section are met, USEPA will deduct from the opt-in unit's compliance account, or the overdraft account of the budget source where the opt-in budget unit is located, allowances equal in number to any allowances allocated to that unit under Section 217.782 of this Subpart for the control period for which the withdrawal is to be effective and earlier control periods. USEPA will close the opt-in budget unit's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the opt-in unit. The account representative for the opt-in budget unit shall become the account representative for the general account.

c) An opt-in budget unit that withdraws from the Subpart U NO_x Trading Program shall comply with all requirements under the NO_x Trading Program concerning all years for which such opt-in budget unit was an opt-in budget unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

d) Notification:

1) After the requirements for withdrawal under subsections (a) and (b) of this Section are met (including deduction of the full amount of allowances required), the Agency will revise the budget permit indicating a specified effective date for the withdrawal that is after the requirements in subsections (a) and (b) of this Section have been met and that is prior to May 1 or after September 30.

2) If the requirements for withdrawal under subsections (a) and (b) of this Section are not met, the Agency will issue a notification to the owner or operator and the account representative of the opt-in budget unit that the opt-in unit's request to withdraw its budget permit is denied. If the opt-in budget unit's request to withdraw is denied, the opt-in budget unit shall remain subject to the requirements for an opt-in budget unit.

e) Reapplication upon failure to meet conditions of withdrawal: If the Agency denies the opt-in budget unit's request to withdraw, the account representative of the opt-in budget unit may submit another request to withdraw in accordance with subsections (a) and (b) of this Section.

f) Ability to return to the NO_x Trading Program: Once an opt-in unit withdraws from the NO_x Trading Program and its budget permit is

withdrawn under this Section, the account representative may not submit another application for a budget permit under Section 217.474(d) of this Subpart for the unit prior to the date that is four years after the date on which the budget permit with opt-in conditions is withdrawn.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.480 Opt-In Units: Change in Regulatory Status

a) Notification: When an opt-in unit becomes an opt-in budget unit under Section 217.476 of this Subpart, the owner or operator shall notify the Agency and USEPA in writing of such change in the opt-in unit's regulatory status within 30 days of such change.

b) Any permit application that provides for a change in the regulatory status of a unit to an opt-in budget unit pursuant to Section 217.474(d)(1)(B) of this Subpart and included in a budget permit, is effective on the date on which such opt-in unit becomes an opt-in budget unit under Section 217.454 of this Subpart.

c) USEPA's action:

1) USEPA will deduct from the compliance account for the opt-in budget unit under this Section, or the overdraft account of the budget source where the opt-in budget unit is located, allowances equal in number to and allocated for the same or a prior control period as:

A) Any allowances allocated to the budget unit (as an opt-in unit) under Section 217.482 of this Subpart for any control period after the last control period during which the unit's budget permit was effective; and

B) If the effective date of any budget permit under subsection (b) of this Section is during a control period, the allowances allocated to the opt-in budget unit (as an opt-in unit) under Section 217.482 of this Subpart for the control period multiplied by the ratio of the number of days in the control period, starting with the effective date of the budget permit under subsection (b) of this Section, divided by the total number of days in the control period.

2) The account representative shall ensure that the compliance account of the opt-in budget unit under subsection (b) of this

Section, or the overdraft account of the budget source where the opt-in budget unit is located, contains the allowances necessary for completion of the deduction under subsection (c)(1) of this Section. If the compliance account or overdraft account does not contain sufficient allowances, USEPA will deduct the required number of allowances, regardless of the control period for which they were allocated, whenever allowances are recorded in either account.

3) For every control period during which any budget permit under subsection (b) of this Section is effective, the opt-in budget unit under subsection (b) of this Section will be treated, solely for purposes of allowance allocations under Section 217.466 or 217.468 of this Subpart, as a unit that commenced operation on the effective date of the budget permit under subsection (b) of this Section and will be allocated allowances in accordance with Section 217.466 or 217.468 of this Subpart.

4) Notwithstanding subsection (c)(2) of this Section, if the effective date of any budget permit under subsection (b) of this Section is during a control period, the following number of allowances will be allocated to the opt-in budget unit for the control period: the number of allowances otherwise allocated to the opt-in budget unit under Section 217.466 or 217.468 of this Subpart for the control period multiplied by the ratio of the number of days in the control period, starting with the effective date of the budget permit under subsection (b) of this Section, divided by the total number of days in the control period.

d) When the owner or operator of an opt-in unit does not renew the budget permit for the opt-in budget unit issued pursuant to Section 217.474(d), USEPA will deduct from the opt-in budget unit's compliance account, or the overdraft account of the budget source where the opt-in budget unit is located, allowances equal in number to and allocated for the same or a prior control period as any allowances allocated to the opt-in budget unit under Section 217.482 of this Subpart for any control period after the last control period for which the budget permit is effective. The account representative shall ensure that the opt-in budget unit's compliance account or the overdraft account of the budget source where the opt-in budget unit is located contains the allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient allowances, USEPA will deduct the required number of allowances, regardless of the control period for which they were allocated, whenever allowances are recorded in either account.

e) After the deduction under subsection (d) of this Section is completed, USEPA will close the opt-in unit's compliance account. If any allowances remain in the compliance account after completion of such deduction and any deduction under 40 CFR 96.54, USEPA will close the opt-in unit's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owner or operator of the opt-in unit. The account representative for the opt-in unit shall become the account representative for the general account.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.482 Allowance Allocations to Opt-In Budget Units

a) Allowance allocations:

1) By the December 31 immediately before the first control period for which the budget permit is effective, the Agency will allocate allowances to the opt-in budget unit and submit to USEPA the allocation for the control period in accordance with subsection (b) of this Section.

2) By no later than the December 31 after the first control period for which the budget permit is in effect and December 31 of each year thereafter, the Agency will allocate allowances to the opt-in budget unit and submit to USEPA allocations for the next control period, in accordance with subsection (b) of this Section.

b) For the first control period, and for each subsequent control period for which the opt-in budget unit has a budget permit, the opt-in budget unit will be allocated allowances in accordance with the following procedures:

1) The heat input (in mmbtu) used for calculating allowance allocations will be the lesser of:

A) The opt-in unit's baseline heat input determined pursuant to Section 217.476(c) of this Subpart; or

B) The opt-in unit's heat input, for the control period in the year prior to the year of the first control period for which the allocations are being calculated, as determined in accordance with 40 CFR 96, subpart H.

2) The Agency will allocate allowances to the opt-in budget unit in an amount equaling the heat input (in mmbtu) determined under subsection (b)(1) of this Section multiplied by the lesser of:

A) The unit's baseline NO_x emission rate (in lbs/mmbtu) determined pursuant to Section 217.476(c) of this Subpart; or

B) The lowest NO_x emissions limitation (calculated in lbs/mmbtu) under State or federal law that is applicable to the budget opt-in unit for the year of the control period for which the allocations are being calculated, regardless of the averaging period to which the emissions limitation applies.

(Source: Added at 25 Ill. Reg._____, effective_____)

SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

Section 217.800 Purpose

The purpose of this Subpart is to implement Section 9.9(d)(3) of the Act by providing a method by which additional NO_x allowances may be generated for use by emission units subject to the requirements of Subparts U or W of this Part. [415 ILCS 5/9.9(d)(3)]

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.805 Emission Unit Eligibility

Any owner or operator of a stationary source may submit a proposal, as provided in Section 217.835 of this Subpart, for voluntarily reducing NO_x emissions during the control period, if each emission unit from which NO_x reductions at the source will be obtained meets the following criteria:

a) Discharges through a stack;

b) Is fossil fuel-fired;

c) Is not subject to the requirements of Subparts T, U, V or W of this Part;

d) Is not a retired unit pursuant to 40 CFR 96.5;

e) Has not elected to become an opt-in unit pursuant to Section 217.754 or Section 217.774 of this Part; and

f) Is not a stationary internal combustion engine that emits more than one ton of NO_x per day during the ozone control period.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.810 Participation Requirements

a) Any owner or operator of a source (emission reduction source) with one or more emission units meeting the requirements of Section 217.805 of this Subpart and seeking to make quantifiable, verifiable and federally enforceable voluntary reductions of NO_x emissions during the control period from one or more emission units (emission reduction units) must comply with the following requirements:

1) Submit a NO_x emission reduction proposal that meets the requirements of Section 217.835 of this Subpart;

2) Request an emission cap on NO_x emissions from all NO_x emission units at the emission reduction source that are not otherwise subject to Subparts U or W of this Part, and that are the same type of emission unit as the emission reduction unit (e.g., if the emission reduction unit is a boiler, combined cycle system or turbine, then the emission cap must include all boilers, combined cycle systems or turbines that are not otherwise subject to Subparts U or W of this Part, or if the emission unit is a cement kiln, then the emission cap must include all cement kilns), provided, however, the owner or operator of the source may submit a demonstration in accordance with Section 217.835 of this Subpart that any like-kind emission unit or units should not be included in the NO_x emission cap;

3) Demonstrate how the NO_x emission cap required by subsection (a)(2) of this Section is to be determined, in accordance with Sections 217.820 and 217.845 of this Subpart, which cap reflects the NO_x emission reduction specified in the proposal;

4) Permit requirements:

A) Obtain a permit, or an amendment to an existing permit, for the source, with federally enforceable conditions

containing the commitments in the NO_x emission reduction proposal and the emissions cap by the later of May 1, 2003, or the date on which the reduction in NO_x emissions will commence and operate the source in compliance with such permit; or

B) For each emission unit that will be generating voluntary NO_x emissions by ceasing operation, withdrawing the applicable permit, or requesting a revision to the permit to reflect the shut down of the emission reduction unit, by the later of May 1, 2003, or the date specified in the NO_x reduction proposal.

5) Submit an emissions baseline determination for each unit subject to the NO_x emission cap in accordance with the requirements of Section 217.820 of this Subpart.

6) Monitoring requirements:

A) To the extent applicable, each emission reduction unit at the source shall comply with the monitoring requirements of Section 217.850 of this Subpart.

B) The emissions measurements recorded and reported in accordance with Sections 217.850 and 217.855 of this Subpart shall be used to determine compliance by the emission reduction unit with the emissions limitation set forth in the NO_x emission reduction proposal and the federally enforceable permit conditions required pursuant to subsection (a)(4) of this Section.

C) The emissions measurements recorded and reported in accordance with Sections 217.850 and 217.855 of this Subpart shall be used to determine compliance by the emission reduction source with the emissions cap set forth in the NO_x emission reduction proposal and the federally enforceable permit condition required pursuant to subsection (a)(4) of this Section.

b) The owner or operator of the emission reduction source is required to submit an annual certification to the Agency that the source has complied with the cap on NO_x emissions for the source and that the NO_x emission

reductions specified in the approved proposal were made pursuant to the requirements of Section 217.850 of this Subpart.

(Source: Added at 25 Ill. Reg._____, effective_____)

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

a) NO_x emission reductions may be recognized under this Subpart if they are quantifiable, verifiable, and federally enforceable, and meet one or more of the following criteria:

1) Due to the use of any NO_x emission reduction technology (e.g., combustion or post combustion control technology or fuel switching) at the emission reduction unit pursuant to federally enforceable conditions in the permit for the unit addressing such control technology or fuel switching, NO_x emissions from the emission reduction unit for any control period beginning in 2003 are or will be lower than such unit's emissions baseline. The amount of actual NO_x emission reductions shall be determined in accordance with Section 217.820 of this Subpart, and the amount of creditable NO_x emission reductions shall be determined in accordance with Section 217.825 of this Subpart;

2) The emission reduction unit is permanently shut down after January 1, 1995, and the owner or operator requests a revision to the relevant operating permit to reflect the shut down of the emission reduction unit. The amount of actual NO_x emission reductions shall be determined in accordance with Section 217.820 of this Subpart, and the amount of creditable NO_x emission reductions shall be determined in accordance with Section 217.825 of this Subpart;

3) During any control period beginning in 2003, the emission reduction unit's control period NO_x emission rate or hours of operation is reduced pursuant to federally enforceable conditions in a permit for such unit, resulting in an actual reduction in NO_x emissions from such unit’s emissions baseline. The amount of actual NO_x emission reductions shall be determined in accordance with Section 217.820 of this Subpart, and the amount of creditable NO_x emission reductions shall be determined in accordance with Section 217.825 of this Subpart.

b) USEPA shall adjust the State's trading portion of the statewide NO_x budget, as established in the NO_x SIP Call, 63 Fed. Reg. 57356 (October 27, 1998), and create allowances for the creditable portion, as set forth in Section 217.825 of this Subpart, of verifiable, quantifiable, and federally enforceable NO_x emission reductions meeting the requirements of this Subpart (the Subpart X NO_x Trading Budget), and allowances from the Subpart X NO_x Trading Budget shall be allocated to recipient emission units in accordance with this Subpart.

c) The Agency shall submit an allocation to USEPA for the creditable portion of verifiable, quantifiable, and federally enforceable NO_x emission reductions meeting the requirements of this Subpart, which allocation may be used for the purposes of demonstrating compliance with the requirements of Subparts U and W of this Part.

d) If USEPA adjusts or fails to adjust the Subpart X NO_x Trading Budget as to any individual emission reduction unit, the Subpart X NO_x Trading Budget shall not be adjusted pro-rata, and only the allowance allocation for that emission reduction unit will be adjusted.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.820 Baseline Emissions Determination

a) An emission unit's emissions baseline shall be determined as follows:

1) By multiplying the unit's actual emissions during the 1995 calendar year, as reported in the annual emission report submitted in accordance with 35 Ill. Adm. Code 254, by 5/12ths; or

2) If the NO_x emissions from the unit were not included in the emission reduction source's 1995 annual emissions report submitted to the Agency pursuant to 35 Ill. Adm. Code 254, by determining the base case amount included for such unit in the NO_x SIP Call inventory, as specified in the "Technical Support Document for Illinois' Statewide NO_x Budget " (63 Fed. Reg. 17349 (Nov. 7, 1997)).

b) If the NO_x baseline emissions for the 1995 control period cannot be determined by the either of the methods listed in subsection (a)(1) or (2) of this Section, such actual NO_x baseline emissions shall be determined based on the average emission rate multiplied by the average number of hours of operation from two of the three control periods, as selected by

the emission reduction source, prior to the year the emission reduction proposal is effective. The unit's emission rate and hours of operation will be determined based on the unit's reported NO_x emission rate and hours of operation in the most recent annual emission reports for such unit submitted in accordance with 35 Ill. Adm. Code 254.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.825 Calculation of Creditable NO_x Emission Reductions

For actual NO_x emission reductions achieved pursuant to Section 217.815(a) of this Subpart,
the gross amount of control period actual NO_x emission reductions shall be determined pursuant to Section 217.820 of this Subpart. Eighty percent of the actual NO_x emission reductions achieved pursuant to Section 217.815(a) shall be creditable. Twenty percent of the actual NO_x emission reductions shall be retired for the benefit of air quality.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.830 Limitations on NO_x Emission Reductions

a) Each NO_x allowance issued for NO_x emission reductions meeting the requirements of this Subpart is a limited authorization to emit one ton of NO_x in accordance with the federal NO_x Trading Program as set forth in Subpart U or W of this Part, as applicable. No provision of the federal NO_x Trading Program, the emission reduction proposal, the permit application, the permit, or of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.

b) Any NO_x allowance issued in accordance with this Subpart does not constitute a property right.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.835 NO_x Emission Reduction Proposal

a) A NO_x emission reduction proposal shall include the following:

1) Information identifying each emission unit at the source that emits NO_x, whether the unit is subject to Subpart T, U, V ,W or X of this Part, and the baseline emissions for each emission unit

subject to the NO_x emission cap as determined in accordance with Section 217.820 of this Subpart;

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

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

4) The amount of the NO_x emission reductions, including supporting calculations and documentation, such as fuel usage information;

5) The emission units subject to the NO_x emission cap in accordance with Section 217.810(a) of this Subpart, and if all like-kind or same-type emission units are not proposed to be included within the NO_x emission cap, an explanation of how the owner or operator of the emission reduction source will ensure that production shifting will not occur, such that the emission reduction source will achieve real, verifiable, and quantifiable NO_x emission reductions;

6) The control period NO_x emission cap to be achieved by the emission reduction source, including both the baseline emissions for each recipient unit subject to the NO_x emission cap and the NO_x emission reductions from the emission reduction units included in the proposal;

7) The name and address of the owner or operator of each emission unit to which the NO_x allowances will be allocated, the Subpart of this Part (i.e, Subpart U or W) to which each unit is subject, including the name, telephone number, and account number of the account representative for each such unit; and

8) Certification by the owner or operator of each unit that is the subject of each proposed emission reduction proposal of his/her acceptance of the terms of the proposal and certification that the emission reductions specified in the proposal have been or will be achieved.

b) The owner or operator of a source submitting an emission reduction proposal must notify the Agency in writing within 30 days of any event or circumstance that makes the NO_x emission reduction proposal incorrect or incomplete.

c) The owner or operator of a source with an approved emission reduction proposal may request to withdraw its emission reduction proposal, and cease to create NO_x allowances under this Subpart, as follows:

1) Requesting withdrawal: To withdraw from participation under this Subpart, the owner or operator of an emission reduction unit shall submit to the Agency a written request to withdraw from participation and to withdraw or revise the applicable permit effective as of a specified date between (and not including) September 30 and May 1. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

2) Conditions for withdrawal: Before an emission reduction source may withdraw its approved emission reduction proposal, and the federally enforceable permit may be withdrawn under this Section, the owner or operator must submit to the Agency an annual compliance certification report in accordance with Section 217.855 of this Subpart for the control period immediately before the withdrawal is to be effective.

3) An emission reduction source that withdraws from this Subpart shall comply with all requirements under its approved emission reduction proposal and federally enforceable permit conditions addressing such proposal concerning all years for which the emission reduction source was in the program, even if such requirements arise or must be complied with after the withdrawal takes effect.

4) Notification:

A) After the requirements for withdrawal under subsections (a) and (b) of this Section are met, the Agency will revise the permit indicating a specified effective date for the withdrawal that is after the requirements in subsections (a) and (b) of this Section have been met and that is prior to May 1 or after September 30.

B) If the requirements for withdrawal under subsections (a) and (b) of this Section are not met, the Agency will issue a notification to the owner or operator of the emission reduction source that the request to withdraw its permit is denied. If the request to withdraw is denied, the source shall remain subject to the requirements of its approved

emission reduction proposal and federally enforceable permit conditions addressing the proposal and the requirements of this Subpart.

5) Reapplication upon failure to meet conditions of withdrawal: If the Agency denies the request of the owner or operator of the emission reduction source's request to withdraw, the owner or operator of the source may submit another request to withdraw in accordance with subsections (a) and (b) of this Section.

6) Upon successful withdrawal from the program, the emission reduction source shall no longer be subject to the provisions of this Subpart.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.840 Agency Action

a) The Agency shall notify the owner or operator submitting a NO_x emission reduction proposal in writing of its decision with respect to the proposal within 90 days after receipt of such proposal and, if applicable, of NO_x emissions data to verify that the specified reductions have occurred. The owner or operator of the emission reduction source may extend the deadline for Agency action in writing. If the Agency disapproves or conditionally approves a proposal, this written notice shall include a statement of the specific reasons for the disapproval or conditional approval of the proposal. The following shall be considered a final Agency action for the purposes of appeal: if the Agency fails to take action within such 90 day period, subject to any extension, or if the Agency disapproves a proposal. If the Agency conditionally approves a proposal, the owner or operator of the emission reduction source has 30 days to submit a modified proposal addressing the specific items listed by the Agency. If the owner and operator of the emission reduction source does not submit a modified emission reduction proposal within such 30 day period, the conditional approval shall be deemed to be a disapproval, and shall be deemed to be a final action for purposes of appeal.

b) The NO_x emissions reduction proposal will not be effective until:

1) After the owner or operator of the emission reduction source has obtained or modified a permit with federally enforceable conditions addressing the requirements of this Subpart; or

2) If NO_x emission reductions are being obtained by the shut down of an emission reduction unit, the owner or operator of the emission reduction unit has either:

A) Obtained or modified a permit with federally enforceable conditions addressing the requirements of this Subpart; or

B) Withdrawn the applicable permit and the Agency has:

i) Provided USEPA with a copy of the proposal and notice of the Agency's proposed approval of the emission reduction proposal, and USEPA has not disapproved such proposal;

ii) Published notice and offered an opportunity to comment, pursuant to 35 Ill. Adm. Code 252, on such permit withdrawal, its proposed approval of the emission reduction proposal for the shut down of the emission reduction unit and the creditable NO_x emission reductions that will be created by the shut down.

c) If the Agency approves the proposal, and subject to the provisions of subsection (b) of this Section, the Agency shall submit an allocation to USEPA for the creditable reductions created pursuant to the requirements of this Subpart subject to the following:

1) Any allowances generated pursuant to this Subpart shall be issued to the recipient emission unit identified in the proposal, for each control period in which the NO_x emissions reductions are verified, and the requirements of this Subpart continue to be met;

2) The owner or operator of the emission reduction source has, by the November 1 following the control period that the emission reduction unit has reduced NO_x emissions, verified the NO_x emission reductions in accordance with Section 217.845 of this Subpart, and obtained a permit containing federally enforceable conditions addressing the requirements of this Subpart;

3) The allowances shall be issued by May 1 after the control period in which the reduction has occurred, for use in any future control period.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.845 Emissions Determination Methods

The owner or operator of an emission reduction source must demonstrate that it has obtained the NO_x emission reductions, and has not exceeded its NO_x emission cap, as specified in its approved NO_x emission reduction proposal, as follows:

a) If the NO_x emission reductions are generated pursuant to Section 217.815(a)(1) of this Subpart, the NO_x emission rate for each emission reduction unit shall be determined as follows:

1) Through the use of continuous emissions monitoring in accordance with Section 217.850 of this Subpart; or

2) Through the use of any test methods and procedures provided in 40 CFR 60 and approved by the Agency, or any other method approved by the Agency when included as federally enforceable conditions in a permit issued or revised pursuant to this Subpart.

b) If the NO_x emission reductions are generated pursuant to Section 217.815(a)(3) of this Subpart, submit an initial compliance demonstration plan to the Agency 120 days prior to the control period date that the emission reduction unit will commence NO_x emission reductions in compliance with an approved emissions reduction proposal. Such demonstration shall be based on the actual NO_x emission rate measured in accordance with Section 217.850 of this Subpart.

c) If the emission reduction unit's compliance with the NO_x emission reduction proposal is determined in accordance with subsection (a)(2) of this Section, conducting an initial test 90 days prior to the date the specified emission reductions will be obtained, or within 45 days of the Agency's request for NO_x emission reductions already obtained, and notifying the Agency in writing of any test performed to comply with the requirements of this Subpart at least 30 days prior to the test. The Agency may at any time require annual control period testing of any emission unit at the NO_x emission reduction source, and may require such testing as part of its approval of a NO_x emission reduction proposal.

d) By the November 1 following each control period in which NO_x emission reductions are generated, the owner or operator of an emission reduction source must:

1) Submit a compliance certification, including supporting data, that the NO_x emission cap, as specified in its approved NO_x emission reduction proposal, has not been exceeded; and

2) Monitor and report the NO_x emissions during each control period from all NO_x emission units at the source subject to the NO_x emission cap in accordance with Sections 217.850 and 217.855 of this Subpart.

e) The owner or operator of an emission reduction source shall, 120 days prior to the date that the emission reduction source will commence NO_x emission reductions in compliance with an approved emissions reduction proposal, submit to the Agency a performance evaluation for each CEMS using the applicable performance specifications in 40 CFR 60, Appendix B, as incorporated by reference in Section 217.104 of this Part.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.850 Emissions Monitoring

a) The owner or operator of an emission reduction source shall install, calibrate, maintain, and operate during the control period on each NO_x emission unit at the source subject to the NO_x emission cap a continuous emission monitoring system (CEMS), or an alternative approved by the Agency and included in a federally enforceable permit condition, for measuring NO_x emissions to the atmosphere.

b) The CEMS shall be operated and data recorded during all periods of operation of the emission unit at the source during the control period, except for periods of CEMS breakdowns and repairs as provided in subsection (e) of this Section.

c) CEMS quality assurance data must be recorded during calibration checks and zero and span adjustments.

d) The 1-hour average NO_x emissions measured by the CEMS shall be:

1) Expressed in lbs/hr or in lbs/mmbtu and heat input;

2) Calculated using the data points required under 40 CFR 60.13, as incorporated by reference in Section 217.104 of this Subpart; and

3) Calculated using at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quarter of an hour) if data are unavailable as a result of the performance of calibration, quality assurance, or preventive maintenance activities.

e) The procedures under 40 CFR 60.13, as incorporated by reference in Section 217.104 of this Subpart, shall be followed for installation, evaluation, and operation of each CEMS.

f) For monitoring systems measuring NO_x in lbs/hr, if NO_x emission data are not obtained because of CEMS breakdown, repairs, calibration checks, or zero and span adjustments, NO_x emission data shall be obtained by using the data substitution procedures contained in 40 CFR 75, subpart D, incorporated by reference in Section 217.104 of this Part.

g) For monitoring systems measuring NO_x in lbs/mmbtu, if NO_x emission data are not obtained because of CEMS breakdown, repairs, calibration checks, or zero and span adjustments, NO_x emission data shall be obtained by using the rolling hourly average of emission data recorded for the previous 30 day period of operation if the data capture for such period is 95% or greater and the period of missing data is equal to or less than 24 consecutive hours. If the data capture for such previous 30 day period is less than 95% or the period of missing data is greater than 24 consecutive hours, the data shall be obtained by using the highest hourly average recorded during the previous 30 days of operation.

h) The CEMS shall be subject to the quality assurance procedures and requirements of 40 CFR 60, Appendix F, incorporated by reference in Section 217.104 of this Part.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.855 Reporting

a) By the November 1 of each year beginning in 2003, or the year of the first control period for which NO_x emission reductions were generated in accordance with this Subpart, an owner or operator of an emission reduction source must, as a seasonal component of the annual emission report for the source pursuant to 35 Ill. Adm. Code 254, report to the Agency the total control period NO_x emissions of each NO_x emission unit at the source subject to the NO_x emission cap.

b) Within 30 days after receipt of such data or evaluation, the owner or operator of each emission reduction source shall submit to the Agency the performance test data from the initial performance test for each emission reduction unit and the performance evaluation for each CEMS using the applicable performance specifications in 40 CFR 60, Appendix B, as incorporated by reference in Section 217.104 of this Part.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.860 Recordkeeping

a) The owner or operator of an emission reduction source shall keep and maintain the following records for each NO_x emission unit at the source subject to the NO_x emission cap:

1) Daily, monthly, and control period operating hours;

2) Type and quantity of each fuel used daily during the control period;

3) Control period capacity factor of individual fuels fired and all fuels fired;

4) Monitoring records; and

5) To the extent applicable, the performance test data from the initial performance test for each emission reduction unit and the performance evaluation for each CEMS using the applicable performance specifications in 40 CFR 60, Appendix B, as incorporated by reference in Section 217.104 of this Part.

b) The owner or operator of an emission reduction source shall maintain records of the following information for each operating day for each NO_x emission unit subject to the NO_x emission cap:

1) Calendar date;

2) The average hourly NO_x mass emission rate expressed as lbs/hr;

3) The control period total NO_x mass emissions to date;

4) Identification of times when emission data have been excluded from the calculation of NO_x mass emissions, the reasons for excluding the data, and any corrective actions taken;

5) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

6) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with the Performance Specifications in 40 CFR 60, Appendix B; and

7) Results of daily CEMS drift tests and quarterly accuracy assessments as required under 40 CFR 60, Appendix F.

c) The owner or operator of any NO_x emission reduction source subject to the continuous monitoring requirements for NO_x under this Subpart, shall submit a compliance certification containing the information recorded under subsection (b) of this Section. All compliance certification reports shall be postmarked by November 1 or the next business day if November 1 falls on a Saturday or Sunday, of each control period in which NO_x emission reductions are generated.

d) Maintenance of records: Unless otherwise provided, the owner or operator of a NO_x emission reduction source shall keep on site at the source, each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Agency.

1) The emission reduction proposal and all documents that demonstrate the accuracy of the statements in the proposal for each year the emission reduction source generates NO_x reductions under this Subpart and for 5 years thereafter.

2) All emissions monitoring information required pursuant to this Subpart; provided that to the extent that 40 CFR 60 provides for a 3-year period for recordkeeping, the 3-year period shall apply.

3) Copies of all reports, compliance certifications, and other submissions and all records made or required under this Subpart.

4) Copies of all documents used to complete any permit application and supporting documents and any other submission to demonstrate compliance with the requirements of this Subpart.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.865 Enforcement

a) Excess emissions requirements: The owner or operator of an emission reduction source for which NO_x reductions have been recognized pursuant to this Section and that has excess NO_x emissions in any control period for which NO_x allowances have been issued must:

1) For the first control period during which the emission reduction source has excess NO_x emissions, purchase NO_x allowances in an amount equal to 2 times the excess NO_x emissions in accordance with the federal NO_x Trading Program and surrender the allowances to the Agency by December 31 following the control period in which the emission reduction source had excess emissions;

2) For the second control period during which the emission reduction source has excess NO_x emissions, purchase allowances in an amount equal to 3 times the excess NO_x emissions in accordance with the federal NO_x Trading Program and surrender the allowances to the Agency by December 31 following the control period in which the emission reduction source had excess emissions;

3) If the emission reduction source has excess NO_x emissions for 3 control periods, purchase allowances in an amount equal to 4 times the excess NO_x emissions pursuant to the federal NO_x Trading Program and surrender the allowances to the Agency by December 31 following the control period in which the emission reduction source had excess emissions, and the NO_x emission reduction proposal shall be automatically revoked. The emission reduction source will thereafter not be able to generate NO_x emission reductions for which NO_x allowances may be issued under this Subpart.

b) All allowances surrendered to the Agency pursuant to subsections (a)(1) through (a)(3) of this Section shall be retired to benefit air quality.

c) Nothing in this Subpart limits the authority of the State or the federal government to seek penalties and injunctive relief for any violation of this Subpart or any permit condition. Nothing in this Subpart limits the right of the State or the federal government or any person to directly enforce against actions or omissions which constitute violations of permits required by the Act or regulations promulgated thereunder or the CAA or applicable federal environmental laws and regulations.

(Source: Added at 25 Ill. Reg._____, effective_____)

Section 217.Appendix E Large Non-Electrical Generating Units

COMPANY ID # / NAME	UNIT DESIGNATION	UNIT DESCRIPTION	BUDGET ALLOCATION	BUDGET ALLOCATION LESS 3% NSSA
1	2	3	4	5
A. E. STALEY MANUFACTURING CO				
115015ABX	85070061299	COAL-FIRED BOILER 1	176	171
115015ABX	85070061299	COAL-FIRED BOILER 2	175	170
115015ABX	73020084129	BOILER #25	125	121
A. E. STALEY MANUFACTURING CO (Total Allocation)			476	462

ARCHER DANIELS MIDLAND CO EAST PLANT

115015AAE	85060030081	COAL-FIRED BOILER 1	238	231
115015AAE	85060030081	COAL-FIRED BOILER 2	261	253
115015AAE	85060030081	COAL-FIRED BOILER 3	267	259
115015AAE	85060030082	COAL-FIRED BOILER 4	276	268
115015AAE	85060030082	COAL-FIRED BOILER 5	275	267
115015AAE	85060030082	COAL-FIRED BOILER 6	311	302
115015AAE	85060030083	GAS-FIRED BOILER 7	19	18
115015AAE	85060030083	GAS-FIRED BOILER 8	19	18
ARCHER DANIELS MIDLAND CO EAST PLANT (Total Allocation)			1,666	1,616

CORN PRODUCTS INTERNATIONAL INC

031012ABI	91020069160	GAS-FIRED BOILER 6	55	53
031012ABI	73020146041	BOILER # 1 COAL-FIRED	210	204
031012ABI	73020146042	BOILER # 2 COAL-FIRED	210	203
031012ABI	73020146043	GAS FIRED BOILER NO 4 WEST STACK BLRS	81	79
031012ABI	73020147045	BOILER # 3 COAL-FIRED	211	205
031012ABI	73020147046	GAS FIRED BOILER NO 5-EAST STACK BOILER	81	79
CORN PRODUCTS INTERNATIONAL INC (Total Allocation)			848	823

GREAT LAKES NTC

097811AAC	78080071011	BOILER # 5	26	25
097811AAC	78080071011	BOILER # 6	26	25
GREAT LAKES NTC (Total Allocation)			52	50

JEFFERSON SMURFIT CORPORATION

119010AAL	72120426001	BLR 7-COAL FIRED	39	38
JEFFERSON SMURFIT CORPORATION (Total Allocation)			39	38

MARATHON OIL CO ILLINOIS REFINING DIV

033808AAB	72111291055	BOILER #3 OIL,REF GAS FIRED	53	51
033808AAB	72111291056	BOILER #4 REF GAS,OIL FIRED	53	52
MARATHON OIL CO ILLINOIS REFINING DIV (Total Allocation)			106	103

EXXON MOBIL

197800AAA	72110567002	AUX BOILER-REFINERY GAS	101	98
197800AAA	86010009043	STATIONARY GAS TURBINE	85	82
EXXON MOBIL (Total Allocation)			186	180

WILLIAMS

179060ACR	73020087019	BOILER C - PULVERIZED DRY BOTTOM	377	366
WILLIAMS (Total Allocation)			377	366

EQUISTAR

063800AAC	72100016013	BOILER # 1	40	39
063800AAC	72100016013	BOILER # 2	40	39
063800AAC	72100016014	#3 GAS FIRED BOILER	40	39
063800AAC	72100016016	#5 GAS FIRED BOILER	40	39
063800AAC	72100016017	#6 BOILER	40	38
EQUISTAR (Total Allocation)			200	194

EQUISTAR

041804AAB	72121207108	BOILER NO 1	121	118
041804AAB	72121207109	BOILER NO 2	121	118
041804AAB	72121207110	BOILER NO 3	121	117
041804AAB	72121207111	BOILER NO 4	120	116
041804AAB	72121207112	BOILER NO 5	0	0
EQUISTAR (Total Allocation)			483	469

TOSCO

119090AAA	72110633080	BOILER NO 15	40	38
119090AAA	72110633081	BOILER NO 16	40	39
119090AAA	72110633082	BOILER NO 17	80	78
TOSCO (Total Allocation)			160	155

U S STEEL - SOUTH WORKS

031600ALZ	82010044013	NO. 6 BOILER,#5 POWER STATION (FUEL-NAT.GAS)	90	88
031600ALZ	82010044014	NO 1 BLR NG	90	87
U S STEEL - SOUTH WORKS (Total Allocation)			180	175

UNIV OF ILL - ABBOTT POWER PLANT

019010ADA	82090027006	BOILER #7	86	83
UNIV OF ILL - ABBOTT POWER PLANT (Total Allocation)			86	83

CITGO PETROLEUM CORPORATION

197090AAI	72110253037	BOILER 43-B-1	23	22
CITGO PETROLEUM CORPORATION (Total Allocation)			23	22

LTV STEEL COMPANY

301600AMC	[UNIT DESIGNATION]	BOILER NO 4B	*	*
LTV STEEL COMPANY (Total Allocation)			*	*

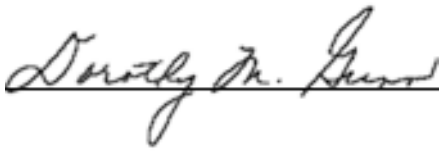
* Pursuant to Section 217.460(f), Column 2, Column 4 and Column 5 will be adjusted at such time as USEPA makes an allocation for LTV Steel's Boiler No. 4B.

GRAND TOTAL	4,882	4,736

(Source: Added at 25 Ill. Reg._____, effective_____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 5th day of April 2001 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board