

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Nitrogen Oxides Emissions
- 2) Code Citation: 35 Ill. Adm. Code 217
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
217.451	New
217.454	Amend
217.456	Amend
- 4) Statutory Authority: Implementing Section 10, and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27, 28]
- 5) A Complete Description of the Subjects and Issues Involved: This proposal will add a provision sunsetting the Nitrogen Oxides (NO_x) SIP Call requirements as set forth in Subpart U that apply to Non-electric generating units (Non-EGUs). Beginning with the 2009 control period (May 1 through September 30), Non-EGUs will no longer be required to hold NO_x allowances in an amount equal to their seasonal NO_x emissions. These sources will continue to be required to monitor, record and report seasonal NO_x emissions.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b) (2008)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

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Pollution Control Board**

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The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R11-08 and be addressed to:

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

Address all questions to Daniel Robertson at 312/814-6931.

Interested persons may obtain copies of the Board's opinion and order by downloading them from the Board's web site at www.ipcb.state.il.us or by calling the Clerk's office at 312/814-3620.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: Any small business, small municipalities, or not-for-profit corporations that are subject to the NO_x Trading Program for non-electric generating units could be affected by the proposed amendments.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2010

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

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SUBTITLE B: AIR POLLUTION
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SUBCHAPTER ~~eg~~: EMISSION STANDARDS AND LIMITATIONS
FOR STATIONARY SOURCES

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NITROGEN OXIDES EMISSIONS

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217.APPENDIX H Compliance Dates for Certain Emissions Units at Petroleum Refineries

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

~~Source~~SOURCE: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-18 at 31 Ill. Reg. ~~14254, 14271~~, effective September 25, 2007; amended in R07-19 at 33 Ill. Reg. 11999, effective August 6, 2009; amended in R08-19 at 33 Ill. Reg. 13345, effective August 31, 2009; amended in R09-20 at 33 Ill. Reg. 15754, effective November 2, 2009; amended in R11-17 at 35 Ill. Reg. ~~6770, 7391~~, effective April 22, 2011; amended in R11-08 at 35 Ill. Reg. _____, effective _____.

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

Section 217.451 Sunset Provisions

Except for Sections 217.454(a) and (b) ~~(Applicability)~~, and 217.456(c), (e)(1)(B) through (D), and (e)(2) ~~(Monitoring, Recordkeeping and Reporting)~~, the provisions of this Subpart U shall not apply for any control period in 2009 or

thereafter. Compliance for 2009 and after is required for ~~the Sections listed herein~~ these subsections. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

(Source: Added at 35 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 NOx Trading Budget.

b) Those units that meet the above criteria ~~and are subject to the NOx 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 NOx allowances from the Subpart U or Subpart W NOx 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 NOx allowances in an amount not less than the NOx emissions from such budget unit during the control period (rounded to the nearest whole ton) in accordance with the federal NOx Trading Program, Subpart X of this Part or pursuant to a permanent transfer of NOx 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 NOx 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 NOx trading programs and other required reductions of NOx emissions pursuant to the NOx 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: Amended at 35 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 NOx 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 NOx 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 NOx 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 NOx 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 NOx emitted by a source with one or more budget units subject to this Subpart in any control period in excess of the NOx 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 NOx Trading Program is a limited authorization to emit one ton of NOx. No provision of the NOx 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 NOx 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 NOx Trading Program~~ ~~or~~ documents necessary to demonstrate compliance with the requirements of this Subpart ~~or the NOx Trading Program~~.

D) Copies of all documents ~~used to complete a budget permit application~~ and any other submission under this Subpart ~~or under the NOx 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 NOx Trading Program~~, including those under 40 CFR 96, ~~subparts D and~~ subpart H.

f) Liability:

1) No revision of a budget permit shall excuse any violation of the requirements of the NOx 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 NOx Trading Program.

3) Any provision of this Subpart or the NOx 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 NOx 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 NOx 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: Amended at 35 Ill. Reg. , effective)

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~~POLLUTION CONTROL BOARD~~

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Insertions	13
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Total changes	36

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162	217.760	NO _x Trading Budget
163	217.762	Methodology for Calculating NO _x Allocations for Budget Electrical Generating
164		Units (EGUs)
165	217.764	NO _x Allocations for Budget EGUs
166	217.768	New Source Set-Asides for "New" Budget EGUs
167	217.770	Early Reduction Credits for Budget EGUs
168	217.774	Opt-In Units
169	217.776	Opt-In Process
170	217.778	Budget Opt-In Units: Withdrawal from NO _x Trading Program
171	217.780	Opt-In Units: Change in Regulatory Status
172	217.782	Allowance Allocations to Budget Opt-In Units

173

174 SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

175

176 Section

177 217.800 Purpose

178 217.805 Emission Unit Eligibility

179 217.810 Participation Requirements

180 217.815 NO_x Emission Reductions and the Subpart X NO_x Trading Budget

181 217.820 Baseline Emissions Determination

182 217.825 Calculation of Creditable NO_x Emission Reductions

183 217.830 Limitations on NO_x Emission Reductions

184 217.835 NO_x Emission Reduction Proposal

185 217.840 Agency Action

186 217.845 Emissions Determination Methods

187 217.850 Emissions Monitoring

188 217.855 Reporting

189 217.860 Recordkeeping

190 217.865 Enforcement

191

192 217.APPENDIX A Rule into Section Table

193 217.APPENDIX B Section into Rule Table

194 217.APPENDIX C Compliance Dates

195 217.APPENDIX D Non-Electrical Generating Units

196 217.APPENDIX E Large Non-Electrical Generating Units

197 217.APPENDIX F Allowances for Electrical Generating Units

198 217.APPENDIX G Existing Reciprocating Internal Combustion Engines Affected by the NO_x

199 SIP Call

200 217.APPENDIX H Compliance Dates for Certain Emissions Units at Petroleum Refineries

201

202 AUTHORITY: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28.5 of the

203 Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28.5].

204

205 SOURCE: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23,

206 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101,

207 effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128,

208 effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001;

209 amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-

210 18 at 31 Ill. Reg. 14271, effective September 25, 2007; amended in R07-19 at 33 Ill. Reg. 11999,

211 effective August 6, 2009; amended in R08-19 at 33 Ill. Reg. 13345, effective August 31, 2009;

212 amended in R09-20 at 33 Ill. Reg. 15754, effective November 2, 2009; amended in R11-17 at 35

213 Ill. Reg. 7391, effective April 22, 2011; amended in R11-08 at 35 Ill. Reg. _____, effective

214 _____.

215

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

Section 217.451 Sunset Provisions

Except for Sections 217.454(a) and (b) and 217.456(c), (e)(1)(B) through (D), and (e)(2), the provisions of this Subpart U shall not apply for any control period in 2009 or thereafter. Compliance for 2009 and after is required for these subsections. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

(Source: Added at 35 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

259 permanent election, at the time of applying for a budget permit
 260 pursuant to this Part, to subject the unit to the requirements of this
 261 Subpart rather than Subpart W of this Part. Any unit for which
 262 such an election is made will not receive an allocation from the
 263 Subpart U or Subpart W NO_x Trading Budget.
 264

- 265 b) Those units that meet the above criteria ~~and are subject to the NO_x Trading~~
 266 ~~Program emissions limitations contained in this Subpart~~ are budget units.
 267
- 268 c) Low-emitter status: Notwithstanding subsection (a) of this Section, the owner or
 269 operator of a budget unit subject to the requirements of subsection (a) of this
 270 Section may elect low-emitter status by obtaining a permit with federally
 271 enforceable conditions that meet the requirements of Section 217.472(a). Starting
 272 with the effective date of such permit, the unit shall be subject only to the
 273 requirements of Section 217.472.
 274
- 275 d) The owner or operator of any budget unit not listed in Appendix E of this Part but
 276 subject to this Subpart shall not receive an allocation of NO_x allowances from the
 277 Subpart U or Subpart W NO_x Trading Budget, except for any allowance from the
 278 new source set-aside in accordance with Section 217.468 of this Subpart. Such
 279 unit must acquire NO_x allowances in an amount not less than the NO_x emissions
 280 from such budget unit during the control period (rounded to the nearest whole
 281 ton) in accordance with the federal NO_x Trading Program, Subpart X of this Part
 282 or pursuant to a permanent transfer of NO_x allocations pursuant to Section
 283 217.462(b) of this Subpart.
 284
- 285 e) Notwithstanding any other provisions of this Subpart, a source and units at the
 286 source subject to the provisions of subsection (a) of this Section will become
 287 subject to this Subpart on *the first day of the control season subsequent to the*
 288 *calendar year in which all of the other states subject to the provisions of the NO_x*
 289 *SIP Call (63 Fed. Reg. 57355 (October 27, 1998)) that are located in USEPA*
 290 *Region V or are that contiguous to Illinois have adopted regulations to implement*
 291 *NO_x trading programs and other required reductions of NO_x emissions pursuant*
 292 *to the NO_x SIP Call, and such regulations have received final approval by USEPA*
 293 *as part of the respective states' SIPs for ozone, or a final FIP for ozone*
 294 *promulgated by USEPA is effective. [415 ILCS 5/9.9(f)]*
 295

296 (Source: Amended at 35 Ill. Reg. _____, effective _____)
 297

298 **Section 217.456 Compliance Requirements**
 299

300 All budget units subject to the requirements of this Subpart must comply with the following:
 301

- 302 a) The requirements of this Subpart and 40 CFR 96, excluding 40 CFR 96.4(b),
 303 96.55(c) and subparts C, E, and I, as incorporated by reference in Section 217.104
 304 of this Part. To the extent that this Subpart contains provisions which are
 305 inconsistent with any provisions of 40 CFR 96, the owner or operator of budget
 306 units subject to this Subpart shall comply with the provisions of this Subpart in
 307 lieu of those provisions which were incorporated by reference.
 308
- 309 b) Budget permit requirements:
 310
- 311 1) The owner or operator of each source with one or more budget units at the
 312 source subject to this Subpart must submit a complete permit application
 313 for a budget permit in accordance with the provisions of Section
 314 217.458(a)(4), (a)(5) or (a)(6), as applicable, to be issued by the Agency
 315 with federally enforceable conditions covering the NO_x Trading Program
 316 (budget permit), and that complies with the requirements of Section
 317 217.458 of this Subpart.
 318
- 319 2) The owner or operator of one or more budget units subject to this Subpart
 320 must operate each such budget unit in compliance with such budget permit
 321 or complete budget permit application, as applicable.
 322
- 323 3) The owner or operator of one or more budget units subject to this Subpart,
 324 at the time of filing an application for a permit under this Section, must
 325 submit a complete application for either a permit incorporating a source-
 326 wide overdraft account (as such term is defined in 40 CFR 96.2), or a
 327 permit incorporating unit specific compliance accounts for each budget
 328 unit at the source subject to this Subpart. Such election shall be at the sole
 329 discretion of the owner or operator of the source and the Agency shall
 330 incorporate such election into a permit issued to the source pursuant to this
 331 Subpart.
 332
- 333 c) Monitoring requirements:
 334
- 335 1) For budget units subject to the requirements of this Subpart, and which
 336 commence operation on and after January 1, 2000, the owner or operator
 337 of each such budget unit at the source must comply with the monitoring
 338 requirements of 40 CFR 96, subpart H. The account representative of
 339 each such budget unit at the source shall comply with those sections of the
 340 monitoring requirements of 40 CFR 96, subpart H, applicable to an
 341 account representative.
 342
- 343 2) The compliance of each budget unit subject to the requirements of
 344 subsection (c)(1) or subsection (c)(3)(A) of this Section with the control

345 period NO_x emissions limitation under subsection (d) of this Section shall
 346 be determined by the emissions measurements recorded and reported in
 347 accordance with 40 CFR 96, subpart H.
 348

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

351 A) The owner or operator of each such budget unit at the source must
 352 comply with the requirements of 40 CFR 96, subpart H; or
 353

354 B) If the monitoring requirements of 40 CFR 96, subpart H, are
 355 demonstrated by the source to be technically infeasible as applied
 356 to a budget unit subject to the requirements of this Subpart, the
 357 owner or operator of such budget unit may monitor by an
 358 alternative monitoring procedure for the budget unit approved by
 359 the Agency and the Administrator of USEPA pursuant to the
 360 provisions of 40 CFR 75, subpart E. Such alternative monitoring
 361 procedures must be contained as federally enforceable conditions
 362 in the unit's permit.
 363

364 4) The compliance of each budget unit subject to the requirements of
 365 subsection (c)(3)(B) of this Section shall be determined by the emissions
 366 measurements recorded and reported in accordance with the federally
 367 enforceable conditions in the budget unit's permit addressing monitoring
 368 as required by subsection (c)(3)(B) of this Section.
 369

370 d) Allowance requirements:

371 1) As of November 30 of each year, the allowance transfer deadline, the
 372 account representative of each source subject to the requirements of this
 373 Subpart must hold allowances available for compliance deductions under
 374 40 CFR 96.54 for each budget unit at the source subject to this Subpart in
 375 the budget unit's compliance accounts, or the source's overdraft account.
 376 The number of allowances held in these accounts shall not be less than the
 377 total NO_x emissions for the control period (rounded to the nearest whole
 378 ton), as determined in accordance with subsection (c) of this Section, plus
 379 any number of allowances necessary to account for actual utilization (e.g.,
 380 for testing, start-up, malfunction, and shut down) under 40 CFR 96.42(e)
 381 for all budget units at the source subject to this Subpart. Compliance with
 382 this provision shall be demonstrated if, as of the allowance transfer
 383 deadline, the sum of the allowances available for compliance deductions
 384 for all budget units at the source subject to this Subpart is equal to or
 385 greater than the total NO_x emissions (rounded to the nearest whole ton)
 386 from all budget units at the source subject to this Subpart.
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- 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

431 representative for the source and each budget unit at the source
 432 subject to the requirements of this Subpart and all documents that
 433 demonstrate the truth of the statements in the account certificate of
 434 representation, in accordance with 40 CFR 96.13, provided that the
 435 certificate and such supporting documents must be retained on site
 436 at the source beyond such five-year period until such documents
 437 are superseded because of the submission of a new account
 438 certificate of representation changing the account representative.
 439

440 B) All emissions monitoring information, in accordance with
 441 subsection (c) of this Section, provided that to the extent that 40
 442 CFR 96, subpart H, provides for a three-year period for
 443 recordkeeping, the three-year period shall apply.
 444

445 C) Copies of all reports, ~~compliance certifications,~~ and other
 446 submissions and all records made or required under this Subpart ~~or~~
 447 ~~the NO_x Trading Program~~ or documents necessary to demonstrate
 448 compliance with the requirements of this Subpart ~~or the NO_x~~
 449 ~~Trading Program.~~
 450

451 D) Copies of all documents ~~used to complete a budget permit~~
 452 ~~application and any other submission under this Subpart or under~~
 453 ~~the NO_x Trading Program.~~
 454

455 2) The account representative of a source and each budget unit at the source
 456 subject to the requirements of this Subpart must submit to the Agency and
 457 USEPA the reports ~~and compliance certifications~~ required under this
 458 Subpart ~~and the NO_x Trading Program~~, including those under 40 CFR 96,
 459 subparts ~~subparts D and H.~~
 460

461 f) Liability:

462
 463 1) No revision of a budget permit shall excuse any violation of the
 464 requirements of the NO_x Trading Program or this Subpart that occurs prior
 465 to the date that the revision under such budget permit takes effect.
 466

467 2) Each budget source and each budget unit at the source shall meet the
 468 requirements of the NO_x Trading Program.
 469

470 3) Any provision of this Subpart or the NO_x Trading Program that applies to
 471 a source subject to the requirements of this Subpart (including a provision
 472 applicable to the account representative of the source) shall also apply to
 473 the owner and operator of such source and to the owner and operator of

- 474 the budget units subject to the requirements of this Subpart at the source.
475
476 4) Any provision of this Subpart or the NO_x Trading Program that applies to
477 a budget unit subject to the requirements of this Subpart (including a
478 provision applicable to the account representative of such budget unit)
479 shall also apply to the owner and operator of such budget unit. Except
480 with regard to the requirements applicable to budget units with a common
481 stack under 40 CFR 96, subpart H, the owner and operator and the account
482 representative of one budget unit shall not be liable for any violation by
483 any other budget unit of which they are not an owner or operator or the
484 account representative and that is located at a source of which they are not
485 an owner or operator or the account representative.
486
487 5) Excess emissions requirements: The account representative of a source
488 that has excess emissions in any control period shall surrender the
489 allowances as required for deduction under 40 CFR 96.54(d)(1).
490
491 6) The owner or operator of a budget EGU that has excess emissions in any
492 control period shall pay any fine, penalty, or assessment or comply with
493 any other remedy imposed under 40 CFR 96.54(d)(3) and the Act.
494
495 g) Effect on other authorities: No provision of this Subpart, the NO_x Trading
496 Program, a budget permit application, a budget permit, or a retired budget unit
497 exemption under 40 CFR 96.5 shall be construed as exempting or excluding the
498 owner or operator and, to the extent applicable, the account representative of a
499 source or budget unit from compliance with any other regulations promulgated
500 under the CAA, the Act, an approved State implementation plan, or a federally
501 enforceable permit.
502
503

(Source: Amended at 35 Ill. Reg. _____, effective _____)