ILLINOIS POLLUTION CONTROL BOARD
July 10, 1997

IN MATTER OF:	)	
	)	
EMISSIONS REDUCTION MARKET	)	R97-13
SYSTEM ADOPTION OF 35 ILL. ADM.	)	(Rulemaking - Air)
CODE 205 AND AMENDMENTS TO 35	)	
ILL. ADM. CODE 106	)	

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by J. Yi, K.M. Hennessey, and M. McFawn):

This matter is before the Board pursuant to a rulemaking proposal filed by the Illinois Environmental Protection Agency (IEPA) on October 7, 1996. The IEPA filed its proposal pursuant to Sections 9.8, 27, and 28 of the Environmental Protection Act (Act) (415 ILCS 5/9.8, 5/27, and 5/28 (1996)). The IEPA's rulemaking proposal has two components. The first is the addition of 35 Ill. Adm. Code 205 which sets forth regulations creating an emissions reduction market system (ERMS) program for volatile organic material (VOM) for the Chicago nonattainment area. As proposed, the ERMS program is one component of the IEPA's plan designed to achieve a 9% reduction in VOM emissions by 1999 in the Chicago nonattainment area. The second component of the proposal amends 35 Ill. Adm. Code 106, the Board's procedural regulations, to provide procedures by which the regulated sources may appeal IEPA's decisions pertaining to the ERMS program.

To date the Board has held nine days of hearings in this matter. The hearings took place on January 21 and 22, February 3, 4, 10 and 11, March 10, and April 21 and 22, 1997. All the hearings were held in Chicago, since the area of the State concerned is the Chicago nonattainment area. After the last hearing, a pre-first notice public comment period was established that ended May 16, 1997.

Today the Board acts to send this rulemaking proposal to first notice. Pursuant to Section 5-40 of the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-40 (1996)) and Section 102.342 of the Board's procedural rules, the IAPA 45-day public comment period will commence upon publication of today's proposal in the Illinois Register, during which the Board will accept written comments from any person. Persons interested in providing comments on this rulemaking proposal should submit such comments in writing to the Clerk of the Board prior to the expiration of this 45-day period. The Board also directs the hearing officer to schedule a hearing in this matter to address, including but not limited to: the findings of the Ozone Transport Assessment Group (OTAG) as discussed on pages 6-7; the requirements of Section 9.8(c)(3) as discussed on pages 9-15; the definition of the "natural" used in the definition of "Account Officer" as discussed on page 16; New Source Review (NSR) Offsets as discussed on pages 17-18; applicability of the ERMS program to landfills as discussed on page 21; which methods and practices will be used during an appeal as discussed

on page 27; the language of Section 205.330 and Section 205.337(b) as discussed on page 35; whether allotment trading units (ATUs) should be permanent as discussed on pages 36-37; adoption of a Maximum Achievable Control Technology (MACT) for industrial categories and exclusion from the ERMS program as discussed on page 41; emission units achieving Best Available Technology (BAT) and exclusion from the ERMS program as discussed on pages 41-42; Emission Reduction Generator (ERG) shutdowns as discussed on pages 45-48; and Emissions Excursion Compensation as discussed on pages 53-54.

GENERAL BACKGROUND

The IEPA's proposal is before the Board as a result of the Clean Air Act (CAA) and corresponding federal regulations. Section 109 of the CAA (42 U.S.C. 7409) establishes the national primary and secondary ambient air quality standards (NAAQS). The United States Environmental Protection Agency (USEPA) promulgated its NAAQS at 40 C.F.R. 50. Specifically, the NAAQS which is driving IEPA's proposal to reduce VOM is the NAAQS for ozone (40 C.F.R. 50.9). Based on the NAAQS for ozone, the USEPA, pursuant to Section 107 of the CAA (42 U.S.C. 7407), designated the Chicago area as a severe ozone nonattainment area.[1] Section 181 of the CAA (42 U.S.C. 7511) requires the Chicago severe nonattainment area to achieve overall attainment with the NAAQS for ozone by the year 2007. As part of achieving the NAAQS for ozone, Section 182 of the CAA (42 U.S.C. 7511(a)) required two separate plan demonstrations to be made by November 1994. The first demonstration was IEPA's plan for achieving overall attainment in the Chicago nonattainment area for the NAAQS for ozone. The second demonstration was a plan that contains a 3% reduction[2] in emissions from the baseline emissions established for the Chicago nonattainment area each year starting in 1997.[3] The Rate-of-Progress (ROP) plan demonstrations are required for each consecutive 3-year period until overall attainment is achieved. Therefore, in November 1994, the IEPA was required to demonstrate to the USEPA a plan for overall attainment of the ozone NAAQS in the Chicago nonattainment area and a plan demonstrating the first 3% ROP for the Chicago nonattainment area.

The IEPA was not able to provide either demonstration to the USEPA. Instead, the IEPA and the other Great Lakes states presented findings concerning NO_x reduction and VOM transport modeling, and proposed a regional approach in solving the ozone pollution problem to the USEPA. In response, the USEPA issued a memorandum on March 2, 1995 (Memorandum). The Memorandum acknowledged the good faith efforts of the IEPA and the other states in complying with the CAA and provided the states with a two-phase program approach to ensuring full approval of the CAA attainment demonstrations of Illinois and the other states. The first phase required the IEPA to submit a plan to implement, by May 1999, control measures including at least a 9% reduction of ozone precursors starting in 1997 to

---

[1] The Chicago nonattainment area is comprised of Cook, DuPage, Kane, Lake, McHenry, and Will Counties, and Aux Sable, Goose Lake, and Oswego Townships. (See 56 Fed. Reg. 56694.)

[2] The 3% reduction is commonly referred to as the Rate-of-Progress or ROP.

[3] The ozone emission baseline for the Chicago nonattainment area was determined in 1990.

satisfy the ROP; a State Implementation Plan (SIP) committing to a schedule for the submission of the remaining ROP measures; and a SIP commitment to submit the overall attainment plan by mid-1997. The Memorandum established the end of 1995 as the due date for the first phase submittals. The second phase included submittals demonstrating compliance with the ROP and SIP measures for the first phase, the overall NAAQS attainment plan demonstration, and any other controls necessary to achieve overall attainment.

In addition to establishing the two-phase program, the Memorandum also acknowledged the transport of ozone and established a collaborative process among the states in the eastern half of the country to evaluate and address transport of ozone and its precursors which led to the formation of OTAG. OTAG is comprised of several representatives from the regulated community, government, and environmental groups. The USEPA envisioned that OTAG would release its findings by the end of 1996 so that the affected states could take OTAG's findings into account when making their overall attainment demonstrations for the NAAQS for ozone. OTAG released its findings during the week of June 23, 1997.

On July 10, 1996, the USEPA issued a "Final Rule Making Findings of Failure To Submit Required State Implementation Plans for Nonattainment Areas for Ozone" against Illinois and other states which failed to make the proper submittals pertaining to the first phase of the program established in the Memorandum. (See 61 Fed. Reg. 36294.) The USEPA stated that to avoid sanctions the IEPA must submit the plans as required by the first phase of the Memorandum within 18 months. The IEPA proposed the ERMS program as one component of its plan to fulfill Illinois' obligations established in the Memorandum and the USEPA's findings of July 10, 1996.[4]

REGULATORY FRAMEWORK

Section 9.8 of the Act was created by P.A. 89-173, which became effective on July 19, 1995. Based on certain findings of the Illinois General Assembly, Section 9.8 of the Act grants the IEPA authority to propose an emissions market system. Section 9.8(c) establishes requirements by which the Board shall adopt regulations implementing an emissions market system in Illinois. 415 ILCS 5/9.8(c) (1996). Section 9.8(c) of the Act states "that the rules adopted by the Board shall include provisions that:"

(1) Assure that compliance with the required emissions reductions under the market system shall be, at a minimum, as cost-effective as the traditional regulatory control requirements in the State of Illinois.

---

[4] The ERMS program is one component of the ROP demonstration. The IEPA stated that certain federal programs involving mobile sources, such as off-road vehicles, and the IEPA proposed rule in R97-24, In the Matter of : 9% ROP Plan Control Measures from VOM Emissions-Tightening Cold Cleaning Requirements: Amendments to 35 Ill. Adm. Code Parts 211, 218 and 219, affecting area sources, are the other components of the 9% ROP demonstration. (Tr. at 71-74, 107-108, 112-114; Exh. 6.)

(2) Assure that emissions reductions under the market system will not be mandated unless it is necessary for the attainment and maintenance of the National Ambient Air Quality Standard for ozone in the Chicago nonattainment area, as required of this State by applicable federal law or regulation.

(3) Assure that sources subject to the program will not be required to reduce emissions to an extent that exceeds their proportionate share of the total emission reductions required of all emission sources, including mobile and area sources, to attain and maintain the National Ambient Air Quality Standard for ozone in the Chicago nonattainment area.

(4) Assure that credit is given or exclusion is granted for those emission units which have reduced emissions, either voluntarily or through the application of maximum available control technology or national emissions standards for hazardous air pollutants, such that those reductions would be counted as if they had occurred after the initiation of the program.

(5) Assure that unusual or abnormal operational patterns can be accounted for in the determination of any source's baseline from which reductions would be made.

(6) Assure that relative economic impact and technical feasibility of emissions reductions under the banking and trading program, as compared to other alternatives, is considered.

(7) Assure that the feasibility of measuring and quantifying emissions is considered in developing and adopting the banking and trading program.

These requirements are in addition to the requirements of Sections 27 and 28 of the Act (415 ILCS 5/27, 28 (1996)) which must also be met in adopting any regulation.

SUMMARY OF PROPOSED RULE

The proposed Part 205 is designed to regulate stationary point sources that are located in the Chicago ozone nonattainment area, which are required to obtain a Clean Air Act Permit Program (CAAPP) permit and have seasonal emissions of at least 10 tons of VOM. Proposed Part 205 regulates these sources by establishing a historical emissions baseline and then reducing that baseline by 12%, thereby creating an emissions cap that is 12% below the historical VOM emissions baseline. The baseline is established by averaging the two highest seasons of VOM emissions from the source between 1994 and 1996. The sources are then issued allotment trading units (ATUs) in an amount equal to the reduced baseline. The sources are required to hold ATUs in the amount equal to their seasonal emissions of VOM. The proposed Part 205 identifies the seasonal allotment period to be May 1 through September 30.

Sources can either reduce their emissions by 12% or purchase ATUs from the market created by the proposed rule to meet their emissions needs for each seasonal period. The ERMS program is designed to be permanent and to be a component of the ROP plan to achieve a 9% reduction in VOM emissions in the Chicago nonattainment area.

The proposed Part 205 is divided into seven subparts (A through G). Subpart A contains the general provisions, including sections on severability, purpose, abbreviations, definitions, and a general description of the rule, and a section which describes the different regulatory management periods in a year under the proposal. Subpart B sets forth the applicability of the proposed rule. Subpart C provides how the rule will be administered. Subpart D establishes the trading unit allotments for each emission source. Subpart E creates alternative methods by which ATUs may be generated. Subpart F of the rule describes how the market will be structured and controlled. Subpart G establishes how compliance will be demonstrated and enforced.

DISCUSSION

This portion of the opinion explains the rule as proposed by the IEPA, summarizes the issues raised in the post-hearing comments, and then provides the Board's findings and amendments to the proposal.

The Board has received 16 public comments (PC) in this matter as follows:

PC 1	Comments of the City of Chicago (City)
PC 2	Comments of Commonwealth Edison (CommEd)
PC 3	Testimony of Mr. Lionel Trepanier
PC 4	Comments of Dart Container Corporation (Dart)
PC 5	Comments of Waste Management of Illinois, Inc. (WMII)
PC 6	Comments of the Chemical Industry Council of Illinois (CICI)
PC 7	Comments of Tenneco Plastics Company (Tenneco)
PC 8	Comments of National Solid Waste Management Association (NSWMA)
PC 9	Comments of the Illinois Environmental Regulatory Group (IERG)
PC 10	Comments of the ERMS Coalition (Coalition)
PC 11	Comments of Sun Chemical Company (Sun Chemical)
PC 12	Comments of Minnesota Mining and Manufacturing Company (3M)
PC 13	Comments of the United States Environmental Protection Agency (USEPA)
PC 14	Comments of the Illinois Environmental Protection Agency (IEPA)
PC 15	Comments of the Illinois Steel Group (Steel Group)

PC 16 Comments of Mr. Lionel Trepanier[5]

The first three public comments were received prior to the close of hearing. One of these three is the testimony of one of the participants, Mr. Lionel Trepanier. (PC 3) The remaining thirteen public comments received after the close of hearing address various issues of the ERMS proposal.

Before discussing the comments received that address particular sections of the proposed rules, we will address the comments which concern the statutory requirements of Section 9.8 of the Act. After we discuss the comments concerning Section 9.8 of the Act, we will discuss the proposed ERMS program and public comments section by section, then we will discuss briefly the public comments which are of a more general nature, and will conclude this portion of the opinion with a discussion of the proposed amendments to Part 106.

Section 9.8(b) of the Act

The Coalition asserts that the IEPA has failed to take into account the findings of OTAG as required by Section 9.8(b) of the Act (415 ILCS 5.9.8(b) (1996)). (PC 10 at 3.) Section 9.8(b) of the Act states "[t]he Agency shall design an emission market system that will assist the State in meeting applicable post-1996 provisions under the CAA of 1990, provide maximum flexibility for designated sources that reduce emissions, and take into account the findings of the national ozone transport assessment, existing air quality conditions, and resultant emissions levels necessary to achieve or maintain attainment." (*Id*.) The Coalition argues, based on IEPA's testimony, that the findings of OTAG have not been completed, that "[s]ince the true impact of the proposed rules remain unknown until OTAG completes its findings on national ozone transport, IEPA's proposal of these rules is premature and in violation of Section 9.8(b) of the Act." (*Id*.)

The IEPA did not respond in its public comments to the Coalition's comments concerning the OTAG's findings. However, Mr. Mathur, Bureau Chief of the Air Division at the IEPA, testified that:

> This particular rulemaking is intended to reduce emissions inside as part of the overall target inside. So at the moment, this rule does not accommodate emission reductions outside. That will be done as part of the larger exercise that comes out of OTAG in order to determine what are the strategies that reduce transported ozone. (Tr. at 76.)

---

[5] The Board notes that it appears that Mr. Trepanier did not serve the other participants with his public comments. The Board reminds Mr. Trepanier, as it did at hearing and in hearing officer orders, that it is not sufficient to serve only the IEPA when filing with the Board since Mr. Trepanier has been placed on the service list at his request. The Board will strike any future filings of Mr. Trepanier if they are not properly served to all participants on the service list for this rulemaking.

In clarifying the IEPA's position, Mr. Mathur stated that the IEPA intends to review this rulemaking once the OTAG findings have been released and make revisions as required by the OTAG findings. (Tr. at 77.) Mr. Mathur, in response to questioning, also stated that there are no OTAG findings to take into account and that any OTAG issues need not be taken into account since the IEPA has reduced the time period for these reductions to three years and is not seeking overall attainment with this proposal. (Tr. at 134.)

The IEPA also maintains, through the testimony of Mr. Mathur, that Section 205.110(c), which states that the findings of the national ozone transport assessment will be taken into account, should remain in the proposed rules. (Tr. at 135.) Mr. Mathur explains that further reductions, beyond those proposed as part of the 9% ROP, are necessary for the Chicago nonattainment area to achieve overall attainment with the NAAQS for ozone. (Tr. at 135.) Mr. Mathur states that the IEPA plans to revisit the ERMS program and at that time evaluate it pursuant to the OTAG findings. (Tr. at 135.)

The Board finds that Section 9.8(b) of the Act requires the IEPA to take into account the findings of OTAG when designing a program "that will assist the State in meeting applicable post-1996 provisions under the CAA of 1990," which the 9% ROP is designed to accomplish. The Board acknowledges that the findings of OTAG were just released and that the IEPA did not have the benefit of those findings at the time it proposed the rule and when testifying at hearing. The Board directs the IEPA to consider the recently released findings of OTAG and provide the Board its evaluation of those findings, as they might relate to this rulemaking, at hearing scheduled for August 19, 1997. The IEPA's evaluation should include its rationale for any suggested revisions or any conclusions that no such revisions are necessary.

Section 9.8(c)(1) of the Act

The Coalition argues that the IEPA is unable to determine if it meets this statutory requirement, that compliance with the required emissions reductions under the market system shall be, at a minimum, as cost-effective as the traditional regulatory control requirements. The Coalition bases this assertion on the fact that IEPA cannot determine the amount of reductions that will ultimately be required for overall attainment. (PC 10 at 4.) In support, the Coalition maintains that the IEPA has compared the economic impact and cost-effectiveness of the ERMS program with traditional command and control rules that, if implemented, would obtain the VOM reductions needed to achieve Illinois' emission reduction goal based solely on an estimated 12% reduction from stationary sources. (*Id*.) However, the Coalition asserts that the IEPA indicated in its testimony that further reductions may be necessary but that it will not know until the findings of OTAG are released. (*Id*.) The Coalition concludes that "[b]ecause IEPA does not yet know the amount of emission reductions that it will seek from stationary sources under the ERMS rules, it cannot assure that the required emission reductions under the ERMS rules will be, at a minimum, as cost-effective as traditional regulatory control." (*Id*.)

Additionally, the Coalition believes that if the Board adopts these rules that any further reduction requested by the IEPA must assess the economic reasonableness of that further reduction pursuant to Section 9.8(c)(1) of the Act. (*Id*. at 4-5.) To address this concern, the Coalition proposes the following change to Section 205.400(d) of the proposed ERMS rules:

> (d) Except as provided in subsections (c) and (e) of this Section and Section 205.405(d) of this Subpart, allotments shall remain at 1999 levels unless the Agency makes a demonstration to the Board that further reductions are needed in accordance with the rulemaking provisions of Sections 27 and 28 of the Act.
>
> (i) If the Agency requests further reductions, in accordance with Section 9.8 of the Act, the Agency must demonstrate that the total amount of required emissions reductions from 1996 forward are, at a minimum, as cost-effective as implementing traditional regulatory control requirements in the Chicago nonattainment area in 1996 would have been.

In response to the Coalition, the IEPA states that it believes that no such economic comparison will be required if further reductions are pursued under the ERMS program. (PC 14 at 12.) The IEPA asserts that the testimony of its witnesses, Dr. Case and Ms. Dunham, demonstrated "that the market-based reduction programs like the ERMS program are always at least as cost-effective as traditional command and control programs designed to achieve the same level of reduction." (*Id*.) The IEPA concludes that even if further reductions are needed, the ERMS program will again represent a method at least as cost-effective a method to achieve these reductions when compared to a command and control rule designed to achieve the same level of reduction. (*Id*.)

The Board finds that the IEPA proposal can assure that the amount of emission reductions that it will seek from stationary sources under the ERMS program will be, at a minimum, as cost-effective as traditional regulatory control for two reasons. First, under the ERMS program, sources can choose either to purchase ATUs to meet their seasonal emissions or they may reduce their seasonal emission by whatever means, *i.e*. add on controls, so that their emissions are equal to their ATU allotment which is their baseline minus 12%. Under the traditional command and control programs, a source would be required to achieve a 12% reduction from its baseline emissions without the option of purchasing other source's reductions in emissions or ATUs. Secondly, the ERMS program allows the generation of ATUs from other sectors to be used by the sources regulated under the ERMS program to meet their seasonal emissions which allows sources to seek the most economical means to achieve compliance whether it is at its facility or other sources from other sectors. Pursuant to the record in this matter and based on the testimony of Dr. case, Mr. Beckstead and Ms. Dunham the IEPA has demonstrated that the ERMS program as proposed will be at least as cost-effective as the traditional command and control program achieving a similar reduction.

However, the Board agrees with the Coalition that the IEPA should be required to demonstrate that any future reductions pursuant to the ERMS program meets the requirements of Section 9.8(c)(1) of the Act. However, the Board does not accept the Coalition's suggested revisions but instead will amend Section 205.400(d) to include a reference to Section 9.8 of the Act as follows:

> d) Except as provided in subsections (c) and (e) of this Section ~~and Section 205.405(d) of this Subpart~~, allotments shall remain at 1999 or initial levels unless the Agency makes a demonstration to the Board that further reductions are needed in accordance with the rulemaking provisions of Sections 9.8, 27 and 28 of the Act.

Section 9.8(c)(3) of the Act

Applicability

The IEPA argues that Section 9.8(c)(3) does not apply to this rulemaking because presently the ERMS program is not part of a plan for overall attainment of the ozone NAAQS, but rather is part of the State's 9% ROP. The Coalition argues that Section 9.8(c)(3) applies to this rulemaking. It asserts that if the IEPA is not required to demonstrate compliance with Section 9.8(c)(3) until it is seeking the final emissions reductions that will achieve overall attainment, then the ERMS program could be used to require stationary sources to reduce emissions for years without mobile or area sources reducing their proportionate share. (PC 10 at 8.) The Coalition maintains that for Section 9.8(c)(3) to "have any meaning, it is critical that all three emission sectors reduce their proportionate share of emissions at the same time." (*Id*. at 9.)

The IEPA asserts that Section 9.8(c)(3) will not apply until the IEPA proposes to use the ERMS program for further reductions as part of a plan to actually achieve overall attainment of the ozone NAAQS. (Tr. at 158, 159, 1328, 1329-1330; PC 14 at 23-24.) This interpretation, the IEPA asserts, is supported by the plain language of Section 9.8(c)(3) of the Act. (PC 14 at 23 ("This section references total emission reductions required to attain and maintain the standard.").)

Because the ERMS program is presently not part of a plan to actually reach the ozone standard, but rather is only part of the 9% ROP plan, the IEPA asserts that Section 9.8(c)(3) does not apply to this ERMS rulemaking. (Tr. at 50-51, 124-125; PC 14 at 24.) Thus, the IEPA concludes, while it believes it has demonstrated proportionality for emissions reductions under the 9% ROP plan, it is not required to make this demonstration at this time. (Tr. at 50-51, 68, 124-125; PC 14 at 24.)

The Board finds that Section 9.8(c)(3) applies to this ERMS rulemaking. The 9% ROP plan, of which the ERMS program would be a part, constitutes "emission reductions required . . . to attain" the NAAQS for ozone. (415 ILCS 5/9.8(c)(3) (1996).) Pursuant to Section 182(c)(2)(B) of the CAA, the 9% ROP plan is a SIP revision intended to demonstrate

reasonable further progress toward overall attainment. (See 42 U.S.C. 7511a(c)(2)(B).) The CAA defines "reasonable further progress" as follows:

> such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.

(42 U.S.C. 7501(1) emphasis added.)

The IEPA refers to the 9% ROP plan as a "portion of the attainment demonstration" and recognizes that it will help the Chicago nonattainment area reach overall attainment. (Tr. at 123-124, 159.) In addition, the IEPA acknowledges that the proposed ERMS rules meet the requirements of Section 9.8(c)(2) of the Act - that emissions reductions under the ERMS program not be mandated unless "necessary for the attainment" of the ozone NAAQS. (PC 14 at 19 ("VOM reductions provided by the ERMS are necessary to help attain the ozone standard").)

The Board notes that the 9% ROP plan is different from a SIP revision pursuant to Section 182(c)(2)(A) of the CAA - that is, a plan that will actually result in overall attainment. (See 42 U.S.C. 7511a(c)(2)(A).) The language of Section 9.8, however, does not suggest that Section 9.8(c)(3) necessarily applies only when the IEPA uses the ERMS program in making the Section 182(c)(2)(A) demonstration. Section 9.8 refers to "achieving compliance with the ozone attainment provisions of," "implementation of," and "meeting applicable post-1996 provisions under" the CAA Amendments of 1990. (415 ILCS 5/9.8(a)(1) and (3), (b) (1996).) Such broadly worded references suggest that Section 9.8(c)(3) applies here, where there is not yet a plan for overall attainment, but emissions reductions are being sought under the ERMS program as part of the IEPA's efforts to demonstrate reasonable further progress toward achieving overall attainment.

Moreover, under the IEPA's interpretation of Section 9.8(c)(3), before it demonstrates a plan for overall attainment, the IEPA could seek emissions reductions using the ERMS program as part of reasonable further progress without having to show that sources subject to the ERMS program would not be required to reduce emissions beyond their proportionate share. The Board believes such a result would be inconsistent with Section 9.8(c)(3).

Demonstration

The Coalition asserts that the IEPA has not shown that area and mobile sectors will reduce emissions proportionately under the 9% ROP plan and, as a result, the ERMS rules should not be adopted at this time. (PC 10 at 7-9.)

As for area sources, the Coalition argues, with respect to the cold cleaning rules, that "a majority, if not all, cold cleaning operations are components of stationary sources" and that it is unaware of any "stand-alone cold cleaning operation" in the Chicago nonattainment area.

(*Id*. at 7.) Accordingly, the Coalition argues, while the IEPA refers to the cold cleaning rules as an area sector emissions reduction, "stationary sources will be the sources, once again, required to reduce VOM emissions even further." (*Id*.)

As for mobile sources, the Coalition asserts that the IEPA has not submitted any evidence regarding the specific federal requirements that will result in mobile source emissions reductions by 1999. (*Id*.) Further, it suggests that the IEPA's 9% ROP relies on federal emissions reduction requirements that will not be promulgated until after 1999. (*Id*. at 7, 9.) The Coalition states that it "appears unlikely that mobile sources will actually reduce emissions by 1999." (*Id*. at 7.)

The Coalition concludes that only stationary sources will actually reduce VOM emissions by 1999. (*Id*. at 8.) Accordingly, it asserts that the IEPA has not met the requirements of Section 9.8(c)(3) and requests that the Board delay implementing the proposed rules "until IEPA can assure that stationary sources are not reducing emissions to an extent that exceeds their proportionate share of contribution to VOM emissions in the Chicago nonattainment area." (*Id*. at 8-9.)

The Board finds the Coalition's arguments that only stationary sources will be required to reduce under the IEPA's 9% ROP unpersuasive for three reasons. First, generally speaking, if a company's facility has point and area sources and both types of sources are required to reduce emissions, it is true that the company is required to reduce emissions for both types of sources. This is not necessarily inequitable, as suggested by the Coalition. Rather, if the company has both types of sources contributing to emissions, it should account for the emissions reductions required of such sources.

Second, the IEPA did identify what it described as federal measures that will result in mobile source emissions reductions under the 9% ROP plan. These include the Motor Vehicle Control Program, Detergent Additive Gasoline, Reformulated Gasoline I, Enhanced Inspection/Maintenance, and Off-Road Small Engine Standards. (Tr. at 112-113, 153-154; Technical Support Document at 29-30, 33; Exh. 6.)

Third, for its 9% ROP plan, the IEPA states that it is not relying on measures it expects to be promulgated after 1999. The IEPA did describe what it anticipates will be post-1999 emissions reduction measures, but added that it "is not in the position to take advantage of those today because we have a requirement to show a nine percent reduction aggregate from all the emission sectors by '99." (Tr. at 74; Exh. 6.)

The IEPA asserts that it has satisfied the requirements of Section 9.8(c)(3) by demonstrating that point sources will not be required by the 9% ROP plan to reduce emissions beyond their proportionate share. (Tr. at 159, 160, 165, 1328-1329; PC14 at 23-25.) The IEPA's demonstration is based on four points.

First, the IEPA argues that for each sector's share of emissions reductions under the 9% ROP plan to be proportionate, it should be within the same percentage range as that

sector's contribution to 1996 VOM emissions. (Tr. at 125; PC 14 at 24.) For example, if a sector emitted 22% of the total VOM emissions in 1996, the IEPA asserts that the sector should be responsible for approximately 22% of the total VOM emissions reductions under the 9% ROP plan. (Tr. at 125, 161; PC14 at 24.)

Second, the IEPA asserts that for sources within the Chicago nonattainment area, the percentage of 1996 VOM emissions contributed by each sector is as follows: point sources - 22%; area sources - 26%; and mobile sources - 52%. (Tr. at 124-125, 1329, 1331.)

Third, the IEPA claims that each sector's percentage of VOM emissions reductions under the 9% ROP plan is as follows: point sources - 20%; area sources - 22%; and mobile sources - 58%. (Tr. at 125, 161.) Thus, the IEPA argues, each sector's emissions reductions are proportionate to its emissions contributions. (Tr. at 160.) Specifically, the IEPA argues that point sources are not being asked to reduce emissions beyond their proportionate share - they contributed 22% of the VOM emissions and they will be responsible for 20% of the emission reductions under the 9% ROP plan. (Tr. at 159, 161.)

Fourth, the IEPA states that its 9% ROP plan relies not only on the ERMS program to account for VOM emissions reductions from 1997 through 1999, but also on various other requirements, including federal measures and Illinois' cold cleaning rules. (Tr. at 71-74, 107-108, 112-114; Exh. 6 .)

Therefore, the IEPA concludes that "point sources are only required to reduce by an amount that is proportional to the contribution from this sector to the total emissions pool." (PC 14 at 24.)

Before the Board can determine whether the "proportionality" requirement of Section 9.8(c)(3) has been satisfied, the Board requires confirmation and clarification of certain information provided by the IEPA. The Board requests that the IEPA respond at the August 19, 1997 hearing to the following:

- The IEPA testified that, to meet the 9% ROP, there must be VOM emissions reductions of at least 46 tons per day (TPD) - from 781 TPD in 1996 to 735 TPD in 1999. (Tr. at 112; Exh. 6.) The IEPA also testified that, under the 9% ROP plan, mobile sources would reduce emissions by 34 TPD and area sources would reduce by 13 TPD. (Tr. at 1327.) It appears that the only new emissions reductions from point sources under the 9% ROP plan will result from the ERMS program - a reduction of 12.6 TPD according to the IEPA. (Tr. at 121-122; Technical Support Document at 38, 41; Exh. 6.) This would appear to add up to 59.6 TPD of total VOM emission reductions under the 9% ROP plan, or 13.6 TPD over the target of 46 TPD. Please verify whether the information in this paragraph is correct. Please correct any inaccurate information and supply supporting documentation for any corrections.

- If the preceding calculation is correct, it appears that there is a 13.6 TPD difference between the 9% ROP target of 735 TPD in emissions and the expected actual emissions. It is unclear whether this difference can be accounted for by growth, a contingency, or some other explanation. If it is a contingency, it is unclear whether a contingency of that size is necessary or required. Moreover, other IEPA evidence suggests that there is actually a much smaller contingency. (Tr. at 122 (4 TPD contingency); Exh. 6 (5 TPD contingency).) Please verify how many TPD actual emissions are expected to be below the 9% ROP target and provide supporting documentation. Also, please explain why such a difference is necessary and whether it is required.

- It also appears that it is from the above figures—12.6 TPD, 13 TPD, and 34 TPD, totaling 59.6 TPD - that the IEPA determined that each sector's percentage of total emissions reductions under the 9% ROP plan would be 20% (point sources), 22% (area sources), and 58% (mobile sources). (Tr. at 125, 161.) The IEPA stated that these shares of the reductions (20%, 22%, and 58%, respectively) are proportionate to or within the same percentage range of each of the sector's shares of 1996 emissions - 22%, 26%, and 52%, respectively. (*Id.*; PC14 at 24.) By way of illustration, the IEPA testified that, to equal its share of emissions contributions, the mobile sector's share of the emissions reductions would need to be 31 TPD (Tr. at 1327), which is 52% of 59.6 TPD. Please verify whether the information in this paragraph is correct. Please correct any inaccurate information and supply supporting documentation for any corrections.

- Please describe what the IEPA means by the terms "ERMS sources," "ERMS-exempt sources," and "non-ERMS sources." (Technical Support Document at 34.) Please describe what the IEPA means by the term "participating sources" when it states that "ERMS will reduce participating sources' emissions by 12.6 TPD . . . ." (*Id*.) Please describe how many TPD of the 12.6 TPD in reductions will be provided by ERMS sources. Please describe how many TPD, if any, of the 12.6 TPD will be provided by sources other than ERMS sources, describe how the ERMS program will result in emissions reductions from these other sources, and describe these other sources (*e.g.*, ERMS-exempt sources).

- The IEPA stated that ERMS-exempt sources accounted for approximately 4% of the 1996 point source emissions and that point sources accounted for 171 TPD of 1996 emissions. (Technical Support Document at 34; Exh. 6.) Four percent of 171 TPD is 6.84 TPD. The IEPA also stated that ERMS sources accounted for approximately 61% of the 1996 point source emissions, or 105 TPD of the 171 TPD. (*Id.*) Please verify whether the information in this paragraph is correct. Please correct any inaccurate information and supply supporting documentation for any corrections.

- Finally, in discussing proportionality and what the IEPA describes as the ERMS sources' 13.4% share of total 1996 emissions, the IEPA often refers to a 12% reduction for ERMS sources. (Tr. at 1329, 1331.) It would appear that the 12% figure is a reference to reductions from the baseline emissions of ERMS sources under the proposed rules, and not a reference to ERMS sources' share of the total emissions reductions under the 9% ROP plan. Please verify whether the information in this paragraph is correct. Please correct any inaccurate information and supply supporting documentation for any corrections.

In addition to responding to the above items, the IEPA may provide at the August 19, 1997 hearing any additional information that the IEPA believes will assist the Board in its determination of whether Section 9.8(c)(3) has been satisfied.

Applicability of the ERMS program to Area and Mobile Sources

Dart argues that Section 9.8(c)(3) requires that the proposed rules be applied to area and mobile sources, as well as point sources. Dart asserts that the failure of the ERMS rules to apply to area and mobile sources is inequitable and contrary to the language of Section 9.8(c)(3). (PC 4 at 2-3.) Dart suggests that mobile and area sources account for a significant percentage of VOM emissions. (*Id*. at 2-3.) Dart also argues that the word "sources" in Section 9.8(c)(3) "is not limited to point sources, but clearly applies to mobile and area sources as well." (*Id*. at 3.) The plain meaning of Section 9.8(c)(3), according to Dart, dictates that the proposed rules must impose proportionate emissions reductions on point, area, and mobile sources. (*Id*. at 3.)

The IEPA points out that while area and mobile sources will not be required under the ERMS program to reduce emissions, those sources will have to reduce emissions under other requirements in the 9% ROP plan. (Tr. at 165, 509-510.) The IEPA also asserts that Dart's interpretation that the word "sources" in Section 9.8(c)(3) applies to all three sectors ignores other language in the provision—specifically, that the assurance of proportional reductions is limited to sources "subject to the program," which the IEPA states are point sources. (PC 14 at 25.)

The Board does not agree that the ERMS program itself must also apply to mobile and area sources. Section 9.8(c)(3) uses the words "mobile and area sources" when referring to "total emission reductions required of all emission sources," not when referring to "sources subject to the program." (415 ILCS 5/9.8(c)(3) (1996).)

Future Reductions through the ERMS program

It appears that the Coalition and Dart are requesting that the proposed rules be modified to address any further emissions reductions under the ERMS program that the IEPA may seek after the proposed rules are adopted. Dart argues that the proposed rules should provide the following assurance to point sources: if the ERMS rules do not result in compliance with the

9% ROP requirements, then any additional emissions reductions needed to meet these requirements must be sought from sources other than point sources. (PC 4 at 3-4.)

To the extent that Dart is suggesting that no further emissions reductions be sought under the ERMS program from point sources after this rulemaking, the IEPA states that it has made its "position clear that further reductions may be needed under the ERMS program if Chicago is to achieve attainment." (PC 14 at 26.)

While opposing adoption of the ERMS program at this time, the Coalition proposes changes to the proposed rules in the event that the Board adopts the rules. By proposing the language set forth below, the Coalition intends to ensure that the IEPA "demonstrates that mobile and area sources are simultaneously reducing their proportionate share of VOM emissions" prior to any further emissions reductions under the ERMS program in the future. (PC 10 at 9.) The Coalition proposes that the following be added to Section 205.400(d) of the proposed rules:

> (ii) If the Agency requests further reductions, in accordance with Section 9.8 of the Act, the Agency must demonstrate that mobile and area sources are simultaneously reducing their proportionate share of VOM emission reductions as defined in Section 205.130 of this Part. (*Id* at10.)

The Coalition proposes the following definition for Section 205.130:

> "Proportionate share" means the amount of actual emission reductions from mobile, area and stationary sources from 1996 forward equal to the amount of their respective percent of VOM emissions contribution to total VOM emissions in the Chicago nonattainment area in 1996. (*Id*.)

The Board finds that the issue of further reductions under the ERMS program can be addressed with a small change to the proposed rules. Section 205.400(d) of the proposed rules provides that allotments will remain at 1999 or initial levels unless the IEPA makes a demonstration to the Board through a rulemaking that further reductions are necessary. In this first notice, the Board has added a reference in this provision to make clear that any such future rulemaking would be pursuant not only to Sections 27 and 28 of the Act, but also pursuant to Section 9.8. Thus, the provision as modified ensures that the IEPA cannot require reductions beyond 12% without demonstrating that the "proportionality" requirement of Section 9.8(c)(3) has been satisfied.

The opinion now turns to the description of the proposed rule and the summaries of the comments section by section.

Subpart A General Provisions

Section 205.100 Severability

This section sets forth that the proposal is severable and that if one section is judged invalid the remaining sections would still be in effect.

Section 205.110 Purpose

This section states the purpose of the proposed regulations. That purpose is two-fold. First, the proposal is one component of the IEPA's plan to meet Illinois' obligation pursuant to USEPA's Memorandum and its findings of July 10, 1996. Second, the proposal is designed to conform to the requirements of an emission reduction market system as promulgated in Section 9.8(c) of the Act.

Section 205.120 Abbreviations and Acronyms

This section provides the abbreviations and acronyms used in Part 205 or references to other abbreviations from 35 Ill. Adm. Code 211, Definition and General Provisions.

The Board notes that we added an abbreviation for the Clean Air Act.

Section 205.130 Definitions

This section defines many terms specific to Part 205 and incorporates many definitions from Section 39.5 of the Act (415 ILCS 5/39.5 (1996)) and 35 Ill. Adm. Code 211.

The Board made minor non-substantive changes to the definitions of "allotment," "CAAPP," and "Participating source." Additionally, the Board requests the IEPA to define "natural" in front of "person in the definition of "Account Officer" at the August 19, 1997 hearing or in public comments.

Section 205.140 General System Description

This section explains the intent of Part 205 and sets forth the underlying structure of Part 205. However, this section does not establish applicability or compliance obligations pursuant to Part 205.

The Board strikes this section from the proposed rules since it does not provide any requirements or establish any procedures.

Section 205.150 Emissions Management Periods

This section identifies the seasonal allotment period as May 1 to September 30 and the subsequent reconciliation period as October 1 to December 31. Subsections (c) and (d) of this Section establish key compliance requirements for sources required to participate in the system. Such sources must hold allotment trading units (ATUs), which are equivalent to 200 pounds of VOM emissions, at the end of each reconciliation period in an amount not less than their VOM emissions during the previous seasonal allotment period.

Furthermore, subsections (c)(2) and (d)(1) define the compliance obligations for a source that undergoes a major modification after May 1, 1999, or is a new major source subject to 35 Ill. Adm. Code 203 after May 1, 1999. Such sources are required to hold ATUs at the end of each reconciliation period after the first seasonal allotment period in which the major modification or new source contributed to VOM emissions in an amount not less than 1.3 times the VOM emissions from the new emission source or emissions attributable to the major modification. Additionally, subsection (e) states that if the source complies with this requirement, it will fulfill its offset requirement for VOM emissions pursuant to 35 Ill. Adm. Code 203.302(a), 203.602, and 203.701.

The IEPA in its public comment proposes to change subsection (e) to clarify that the offsets required for a major modification are only for the emissions attributable to the modified emission unit. (PC 14 at 5.)

The Board finds that the suggested language made by the IEPA in their public comments clarifies subsection (e). The IEPA's requested change ensures sources that the ratio of 1.3 to 1 of ATUs is only required of the emission unit involved in the major modification and that any other emission unit within the facility does not have to meet this requirement. The Board accepts the proposed changes in Section 205.150(e).

The Coalition has several concerns on the issue of New Source Review (NSR) and the baseline determinations made pursuant to Section 205.320. (PC 10 at 24.) The Coalition states that its concerns are the result of the inconsistency between Illinois' NSR rules (35 Ill. Adm. Code 203) and the federal rules in the Clean Air Act (CAA). (*Id*.) The Coalition asserts that permit limits on VOM emissions made prior to the implementation of the ERMS program in order to comply with the NSR offset requirements, may unfairly restrict the amount of ATUs it will receive. (*Id*. at 24-25.) Finally, the Coalition is concerned that a source will lose emissions reduction credits under the ERMS program because Illinois' NSR regulations and the CAA are not consistent. (*Id*. at 25.)

In response to the Coalition's concern that the Illinois' NSR rules and CAA are inconsistent, the IEPA states that it is expeditiously working on proposing amendments to Illinois' NSR rules to conform the rules with the CAA. (PC 14 at 38.) The IEPA claims that although the ERMS program is a seasonal program and NSR deals with annual emissions, it believes that the ERMS program can help sources meet the NSR requirements. (*Id*. at 39-40.) The IEPA, in response to the Coalition's concerns with permit limits, states that permit conditions would be considered "applicable requirements" pursuant to Section 205.320, Baseline Emissions, and thus may increase or decrease the source's baseline determinations. (*Id*.)

The Board finds that although the Coalition raises a valid issue concerning the inconsistencies of Illinois' NSR and the CAA we agree with the IEPA that the ERMS program will assist sources in obtaining offsets for NSR. With regards to the Coalition's concern that a source would lose credit for any offsets obtained for NSR prior to the ERMS program, new

language proposed by IERG and the IEPA for Section 205.320, as discussed on page 30 of the opinion, addresses the Coalition's concern. As to the Coalition's concern that permit limits accepted to meet the NSR prior to the ERMS program may not allow for a fair and accurate representation of a source's baseline emissions, this should be addressed by the allowances in Section 205.320 as a result of the proposed changes made by IERG and the IEPA discussed above. The Board, however, requests the participants to further respond at the hearing scheduled for August 19, 1997, or in public comments, whether a source should be able to argue that its baseline should be increased due to achieved NSR offsets or be exempt from the ERMS program NSR offset requirements.

Subpart B Applicability

Section 205.200 Participating Source

As proposed, a "Participating source" is defined in Section 205.130 as any source existing prior to May 1, 1999, that is located in the Chicago ozone nonattainment area, is required to obtain a CAAPP permit, and has seasonal emissions of at least 10 tons of VOM. Any such source will not be considered a participating source if it shuts down all operations prior to having conditions relevant to Part 205 incorporated into its CAAPP permit. Such sources may, however, participate in the ERMS program voluntarily.

Subsection (a) establishes the first seasonal allotment period to be 1999 in which participating sources are required to hold ATUs to address seasonal VOM emissions. Subsection (b) provides that sources that increase to 10 tons or more of VOM emissions in any seasonal allotment period beginning with 1999 are required to hold ATUs to offset seasonal emissions beginning with the season after the increase occurred. Subsection (c) sets forth that sources that increase to 10 tons or more of VOM emissions in any seasonal allotment period beginning with 1999 as a result of a major modification pursuant to 35 Ill. Adm. Code 203, the source must hold ATUs to offset seasonal emissions beginning with the first season the source operates the major modification.

In their public comments, IERG and CICI request that the compliance deadline for the ERMS program be in the year 2000 instead of 1999. (PC 9 at 3, PC 6 at 7.) IERG states that the IEPA's proposal in Section 205.200(a) requires participating sources to operate pursuant to a baseline by 1999 and that it is IERG's position that all sources should be given the maximum time to achieve compliance. (PC 9 at 3.) IERG asserts that the IEPA originally proposed the regulation with a two phase compliance deadline the first being 1999 for larger sources and the second being 2000 for smaller sources. (*Id*.) IERG argues that if the compliance deadline is changed to the year 2000 the same air quality benefits intended by the IEPA will be realized and the regulated community will be allowed greater flexibility. (*Id*.) Both IERG and CICI maintain that the regulations are complicated and that additional time will provide greater efficiency in the ERMS program. (PC 9 at 3, PC 6 at 7.) In determining this issue IERG also requests that the Board consider practical circumstances. (PC 9 at 3-4.) IERG notes that the participating sources will not be able to plan until they receive their baseline determinations from the IEPA in their CAAPP permits. (*Id*. at 4.) IERG states that the IEPA is planning to

issue the CAAPP permits for participating sources by December 31, 1998, and IERG believes that IEPA's schedule is extremely ambitious. (*Id*.) IERG asserts that participating sources will not be able to "plan and implement compliance strategies" until they receive their CAAPP permits and baseline. (*Id*.) IERG does not believe that five months will be sufficient time for the participating sources to prepare for the seasonal allotment period of May 1 through September 30. (*Id*.) IERG states that it does not believe that the CAA prohibits the alternative compliance date. (*Id*. at 5.) Alternatively, IERG proposes a waiver from excursion compensation for the 1999 seasonal allotment period and suggests that Section 205.620, Emission Excursion Compensation, be amended. (*Id*.) IERG suggests the Board amend Section 205.620(b)(1) so that it applies after January 1, 2000. (*Id*.)

In response to IERG's and CICI's comments concerning the starting point of the proposal, 1999 versus 2000, the IEPA states that it does not believe this change is appropriate and is concerned that this change could result in Illinois being sanctioned by the USEPA. (PC 14 at 21.) The IEPA maintains that the proposal requires a reduction in VOM emissions to meet the ROP requirement in 1999 for the stationary source sector in order to fulfill Illinois' obligations under the Memorandum and the July 10, 1996 findings of the USEPA. (*Id*.)

The Board finds that the requested change from 1999 to 2000 is not appropriate considering the underlying goal of the ERMS program. Pursuant to the Memorandum and the July 10, 1996 findings of the USEPA, Illinois is required to demonstrate by January 2, 1998, that it will achieve a 9% reduction in VOM emissions for the Chicago nonattainment area by 1999. (PC 13 at 1.) The USEPA states that "[a]s a result, satisfaction of the requirement for nine percent emissions reduction by 1999 dictates that the emissions reduction market system must require its emissions reductions at least by 1999." (*Id*. at 2.) The Board does acknowledge the tight timeframe by which sources have once the final baseline determination has been issued in the CAAPP permit, but feels that most participating sources should know prior to the issuance of the CAAPP permit what their ultimate baseline determination will be and can plan accordingly. Additionally, the Board finds that providing a waiver to the excursion compensation penalty for 1999 appropriate. However, such waiver should only be applicable to those sources that receive their CAAPP permit after December 31, 1998, and should not remove the requirement to hold sufficient ATUs at the end of the reconciliation period equal to the source's seasonal emissions. Therefore, the Board will amend Section 205.620 as follows:

> The Agency shall obtain emissions excursion compensation from any participating source or new participating source that does not hold ATUs in accordance with Section 205.150(c) or (d) of this Part by the conclusion of the reconciliation period, <u>unless the participating source or new participating source had seasonal emissions for the 1999 seasonal period and was not issued a CAAPP permit prior to January 1, 1999</u>. <u>The participating source or new participating source which had seasonal emissions for the 1999 seasonal period and was not issued a CAAPP permit prior to January 1, 1999 must obtain ATUs at a ratio of 1 to 1.</u> The Agency shall obtain the emission excursion

compensation for all other participating sources or new participating sources pursuant to the following procedures:

Dart disagrees with the IEPA's position not to seek reductions from sources outside of the nonattainment area. (PC 4 at 4.) Dart asserts that IEPA states that the NAAQS for ozone is being violated at the boundary of the Chicago nonattainment area as a result of sources outside of the nonattainment area. (*Id*.) Dart also asserts that IEPA has testified that it has assumed a reduction at the boundary line but is not requiring reductions pursuant to this rulemaking. (*Id*.) Dart argues that the IEPA should seek reductions from outside the nonattainment area at this time because it would provide greater assurance that the ERMS program will achieve the desired emissions reductions and meet the NAAQS. (*Id*. at 4-5.) Dart also notes that Appendix E of the IEPA's Technical Support Document which lists the expected participating sources does not include some of its competitors and urges the IEPA to review its emission reports to insure that the ERMS program is uniformly applied. (*Id*. at 5.)

In response to Dart's comments, the IEPA states that it believes that Dart is somewhat confused about the IEPA's testimony on this issue. (PC 14 at 19.) The IEPA states that "Dart believes that it is inconsistent for the IEPA to make assumptions about reductions in transported ozone without requiring reductions from sources outside of the nonattainment area." (*Id*.) The IEPA claims that the proposal only mandates the reductions needed to fulfill the ROP requirement for 1999 and further reductions under the ERMS would require an amendment to the rule. (*Id*. at 18.) The IEPA claims that the 12% reduction will be needed no matter what the conclusions are as to the amount of VOM emissions entering the nonattainment area. (*Id*.) Furthermore, the IEPA states that "the scope of the OTAG process recognizes the nature of ozone transport issues as regional in nature, rather than localized," and that it "believes it is appropriate to await the results from OTAG before forging ahead with emissions control programs outside of the nonattainment area." (*Id*. at 20.)

The Board finds that it is premature to expand the proposed ERMS program to sources outside of the Chicago nonattainment area. The Board finds that while the IEPA has assumed that VOM from outside the nonattainment area will be reduced, it has not been demonstrated that the ERMS program is the appropriate vehicle to achieve that reduction. Additionally, there is no indication of the extent of the reductions needed and from where those reductions should be sought.

Waste Management states that the ERMS program cannot feasibly be applied to landfills. (PC 5 at 2.)[6] Waste Management asserts that landfills should not be regulated because: (1) total landfill emissions are not measurable with reasonable precision and are almost always grossly overestimated; (2) landfill emissions are not associated with the waste stream and continue after the facility stops accepting waste; (3) landfills will not be able to maintain its emissions at a determined baseline and will constantly have to purchase ATUs; and (4) the unique emission patterns of the landfill cause it to pay emissions fees significantly

[6] The NSWMA public comment endorses the public comments of Waste Management and therefore will not be discussed separately. (PC 8 at 1.)

above actual emissions and pay emissions fees based on peak landfill emission curve. (*Id*. at 2-3.) Waste Management argues that the ERMS program should apply to landfill gas control equipment instead of landfills generally. (*Id*. at 3.) Waste Management states that emissions are readily measurable, and, pursuant pending Federal New Source Performance Standards (NSPS), the control equipment will have emission guidelines. (*Id*.) Furthermore, Waste Management asserts landfills will be required to install collection and control systems by December 1998 and that a MACT standard will be published in 2000. (*Id*.) To conclude, Waste Management asserts that the most practical application of the ERMS program is to apply it to the landfill gas control equipment emissions. (*Id*. at 4.)

The IEPA did not respond in its public comments to Waste Management's comments concerning the applicability of the ERMS program to landfills generally.

The Board finds that it is unclear whether the ERMS program, as proposed, would apply to any landfill and whether the ERMS program should apply to landfills generally or to landfill gas control equipment. Waste Management has not indicated whether any of its landfill sites meet the requirements for a participating source under the proposed ERMS program. The Board requests Waste Management and the IEPA indicate at the public hearing scheduled for August 19, 1997, or in public comments, which landfills, if any, that are operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that are required to obtain a CAAPP permit and have baseline emissions of at least 10 tons of VOM, as specified in Section 205.320(a) of this Part or seasonal emissions of at least 10 tons of VOM in any seasonal allotment period beginning in 1999.

The Board notes that we added language from the proposed definition of "participating source" to Section 205.200.

Section 205.205 Exempt Sources

Subsection (a) exempts a source from the ERMS program if it limits its seasonal emissions of VOM to 15 tons per season or less in its CAAPP permit. If the source is a participating source for the seasonal allotment period of 1999, the source must apply for the applicable permit limit by January 1, 1998. If the source is a participating source for any seasonal allotment period after 1999, the source must apply for the applicable permit limit by December 1 of the first year its seasonal emission are at least 10 tons.

Subsection (b) exempts sources that elect to achieve a seasonal VOM emissions reduction of 18 percent or more by 1999. Such sources are required to submit an ERMS application to establish a baseline level from which this 18% reduction must be achieved. For each source that is exempt, the IEPA will issue ATUs equivalent to any amount of VOM emissions reductions achieved by the source in excess of 12%, or at least six percent, into the Alternative Compliance Market Account (ACMA). Subsection (b) requires sources apply for applicable permit limits by January 1, 1998.

CICI asserts that a participating source should be allowed to exempt itself by voluntarily reducing its seasonal emissions by 12% instead of the proposed 18%. (PC 6 at 5.) CICI states that any reduction in the number of participating sources should be encouraged to reduce the transaction costs of the ERMS program for the IEPA and the participant. (*Id*.) CICI notes that the airshed will still receive the same benefit. (*Id*.) CICI states that under the current proposal of 18%, 6% is being placed in the ACMA which may discourage early reductions from sources. (*Id*.)

The IEPA did not respond in its public comments to CICI's comments concerning the requirement of a 18% reduction in order for a source to be excluded from the ERMS program. At hearing Mr. Chris Romiane, testifying on behalf of the IEPA, stated by way of background the following:

> This exemption from the trading program was requested on behalf of certain types of sources. The Agency agreed to the exemption if the source would provide a substantial reduction source-wide. We settled on 18 percent as one and a half times the 12 percent reduction generally being required from a market perspective. The agency's preference is that sources participate in the market, the trading program and make surplus reductions available to the general market and to other sources. The 18 percent level assures that sources carefully consider whether they pursue this exemption. However, from an air quality perspective, the 18 percent exemption does enhance the trading program's ability to provide a rate of progress required for 1999 which is our fundamental purpose for the program. So we did accept the source's request and accommodate them. (Tr. at 954-955.)

Additionally, Mr. Romaine testified in response to questioning that the IEPA considered other numbers but decided to use 18% as the required reduction. (*Id*. at 955.)

The Board finds that CICI has not provided sufficient reason to change the IEPA's decision to require 18% reduction in order for a source to exempt itself out of the ERMS program.

Section 205.210 New Participating Source

Section 205.130 defines a new participating source as a source not operating prior to May 1, 1999, that is located in the Chicago ozone nonattainment area, is required to obtain a CAAPP permit, and has or will have seasonal emissions of at least 10 tons of VOM. This section also specifies that such sources are required to hold ATUs to address seasonal emissions upon commencing operations.

The Board notes that we added language from the definition of "new participating source" to Section 205.210.

Section 205.220 Insignificant Emissions Units or Activities

This section excludes emission units or activities identified as insignificant activities in a source's CAAPP permit.

Section 205.225 Startup, Malfunction or Breakdown

This section excludes excess VOM emissions attributable to startup, malfunction or breakdown from the system provided operation during such periods is permitted.

Subpart C Operational Implementation

Section 205.300 Seasonal Emissions Component of the Annual Emissions Report

This section requires sources to submit seasonal VOM emissions data as a component of their Annual Emission Report that is filed pursuant to 35 Ill. Adm. Code 254. Subsection (a)(1) requires that such information must be submitted for each preceding seasonal allotment period by October 31, if the source generates VOM emissions from 10 emission units or less, and subsection (a)(2) requires the information by November 30, if the source generates VOM emissions from more than 10 emission units.

Subsection (b) identifies the information that is required to be submitted as part of the seasonal emissions component of the Annual Emission Report.

The Board notes that we added "CAAPP" to subsection (b) before "permit" to identify which permit is being discussed.

Section 205.310 ERMS Applications

This section sets forth when the ERMS applications are required and the informational requirements. Subsection (a) establishes the dates by which participating and new participating sources are required to submit the applications. Subsection (a)(1) requires participating sources to submit applications by January 1, 1998. Subsection (a)(2) provides that any new participating source, a source that increases its VOM to 10 tons per season or more beginning in 1999, must submit an ERMS application by December 1 of the year following its emissions increase. Subsection (a)(3) requires a new participating source that undergoes a major modification to submit an ERMS application at the same time its construction permit is due.

Subsection (b) identifies the information required of each participating source's ERMS application. Sources must submit information necessary to allow the IEPA to determine the appropriate baseline emissions level and to establish emissions determination methods and associated practices. Sources are also required to submit any other information necessary to demonstrate compliance with Part 205 and Section 39.5 of the Act.

Subsection (c) provides that the ERMS applications shall be considered a significant modification of the source's CAAPP permit or a revision of its CAAPP application if a CAAPP permit has not been issued.

Subsection (d) sets forth requirements for the ERMS applications for sources that apply for exemptions from the ERMS program based on VOM emissions reductions of at least 18%. These requirements are similar to those of subsection (b) in that sources must submit information from which its baseline emissions can be determined and to establish appropriate compliance assurance methods and practices within the source's permit.

Subsection (e) requires the IEPA to make a preliminary determination as to each source's baseline emissions within 120 days of receipt of its ERMS application. The subsection also provides that this requirement can be fulfilled by the issuance of a draft CAAPP permit pursuant to the public notice requirements of Section 39.5(8) of the Act. 415 ILCS 5/39.5(8) (1996).

Subsection (f) specifies the information required of sources applying for a major modification subject to 35 Ill. Adm. Code 203. In addition to the informational requirements of subsection (b), this subsection requires a certification that the source acknowledge that it will be required to hold ATUs in an amount not less than 1.3 times its seasonal VOM emissions pursuant to Section 205.150 and must provide a plan explaining how it will obtain the required ATUs for the first three seasonal allotment periods in which it is operational.

Subsection (g) provides the information required of new sources, which is substantially the same as that required of sources in subsection (f) above, except that new participating sources do not need to supply information to establish baseline emissions as such sources will not be allotted ATUs. Sources will be able to purchase ATUs in order to fulfill the requirements of Part 205.

Subsection (h) establishes the information that must be submitted to demonstrate the baseline emissions for participating sources that have new or modified emission units for which three years of operating data is not available at the time the application is submitted. Such sources are only required to submit a written request unless a permit modification is needed.

The Board notes that we added language to subsection (h) to clarify that subsection.

Section 205.315 CAAPP Permits for ERMS Sources

Subsections (a), (b), and (c) establishes the interaction between CAAPP permits and various provisions of Part 205. The IEPA's determination as to baseline emissions, appropriate emissions determination methods and practices, and the appropriateness of exclusions from further reductions are established by the issuance of a CAAPP permit for each source. This section provides that these determinations are appealable to the Board pursuant to the CAAPP permit appeal procedures of Section 40.2 of the Act or by the proposed amendments to the Board's procedural rules. 415 ILCS 5/40.2 (1996).

Subsections (a) and (c) also address certain implementation issues during the pendency of an appeal. If the source appeals the IEPA's baseline determination, the source's proposed baseline emissions shall be used during the pendency of the appeal. During this period, the source will be issued ATUs based on its proposed amount, reduced by 12%, but will not be allowed to trade ATUs. If the IEPA's best available technology (BAT) determination is appealed, the source will be issued ATUs for the proposed BAT emission unit as if the BAT proposal was accepted, that is, it will receive ATUs without the 12% reduction.

Subsection (e) of this section directs the IEPA to coordinate its action on CAAPP permits for participating sources, to the extent possible, by grouping permits for purposes of public notice and public hearings, when necessary.

Subsection (f) specifies the appropriate procedures to transfer permits under the ERMS program. The Board notes that these procedures are in addition to any other applicable procedures.

Subsection (g) provides that any multiple season ATU transfer agreement, pursuant to Section 205.530(a)(2)(B), that has three or more years of transfer remaining shall be identified in the renewed or modified CAAPP permit.

Subsection (h) provides that any multiple season ATU transfer agreement, pursuant to Sections 205.410, 205.480 or 205.490, that has three or more years of transfer remaining shall be identified in a renewed or modified CAAPP permit.

Tenneco requests that the prohibition of the sale of ATUs, pursuant to subsection (a), during the appeal of a CAAPP permit concerning the IEPA's baseline determination should be eliminated. (PC 7 at 5.) Tenneco asserts that the proposed rule is overly burdensome and inconsistent with the appeal of IEPA's BAT determination. (*Id*. at 5-6.) Tenneco states that during the pendency of an appeal only those ATUs which are part of controversy should be restricted and not the whole ATU allotment. (*Id*. at 6.)

The IEPA did not respond in its public comments to Tenneco's comments concerning the prohibition of the sale of ATUs during an appeal of the IEPA's baseline.

The Board finds that sources should be able to use the portion of the ATUs which are not part of the controversy for compliance or sale. However, the Board also finds that the ATUs which are being reviewed can not be used for either purposes (*i.e.*, sale or compliance). The Board is basing this decision on the current treatment of permit appeals. An appeal of a reissued permit only affects those conditions that are appealed and not the whole permit during the appeal period. The applicant operates under the permit for all those conditions that are not under review pursuant to the appeal. Here, during the appeal a source will still have to maintain sufficient ATUs at the end of the reconciliation period and should not be able to use the ATUs under review for compliance or sale. However, those ATUs which are under review will not expire two years after issuance as set forth at Section 205.400(b). The ATUs

under review will not expire until two years after the Board's decision reversing the IEPA determination or if the Board's decision is appealed, until the Board's decision to reverse the IEPA's decision is upheld. The source's allotment of ATUs will be reduced to reflect the IEPA's decision, if upon appeal the Board affirms that decision, when the IEPA issues the source's allotment for the year following such decision or if the Board's decision is appealed, until the Board's decision to affirm the IEPA's decision is upheld. The Board will amend Section 205.315 as follows:

a) The Agency shall determine the baseline emissions for each participating source in accordance with Section 205.320 of this Subpart, through its final permit action on a new or modified CAAPP permit for each such source. The Agency's baseline emissions determination may be appealed in accordance with the CAAPP appeal procedures specified in Section 40.2 of the Act. [415 ILCS 5/40.2 (1996).] If the permit conditions establishing a source's baseline emissions is appealed, the baseline emissions for the source shall be as proposed in the source's ERMS application during the pendency of the appeal. During the pendency of the appeal, ATUs shall be allotted to the source pursuant to this baseline emissions amount, reduced in accordance with Section 205.400(c) of this Part, but such source shall not be allowed to sell or use the portion of the ATUs that are attributed to the part of the source's proposed baseline emissions that were denied by the Agency and are under review by the Board to meet its seasonal emissions. The allotted ATUs that are under review will expire two years after the date of the final decision which allows the source to use or sell the ATUs under appeal, instead of two years after the issuance as set forth at Section 205.400(b).

c) The Agency shall determine, in accordance with Section 205.405(b) of this Part, if an emission unit qualifies for exclusion from further reductions in its final permit action on a new or modified CAAPP permit for each such source. The Agency's determination may be appealed in accordance with the CAAPP appeal procedures specified in Section 40.2 of the Act. If the permit conditions establishing the Agency's best available technology determination is appealed, ATUs shall be allotted to the source for any emission unit for which the Agency's best available technology (BAT) determination is being appealed without the emissions reduction otherwise required by Section 205.400(c) of this Part during the pendency of the appeal. The source however cannot sell or use the portion of the ATUs to meet its seasonal emissions that are attributed to the emission unit(s) that the source proposed as meeting BAT but were not accepted by the Agency as meeting BAT and are under review by the Board. The allotted ATUs that are under review will expire two years after the date of the final decision that determines that those emission units are using BAT instead of two years after the issuance as set forth at Section 205.400(b).

Additionally, the Board requests the participants address which methods and practices should be used during an appeal under subsection (b) at hearing on August 19, 1997 or in public comments.

Dart suggests that the proposed regulations clearly state that any IEPA decisions related to the implementation of the ERMS program can be appealed pursuant to Section 40.2 of the Act. (PC 4 at 7.) Dart asserts that the Agency testified that all decisions are appealable but the regulations do not reflect that testimony. (*Id*.) Dart argues that the Agency should be required to inform the regulated community that its decisions can be appealed. (*Id*. at 7-8.)

In response to Dart's public comments, IEPA states that Sections 205.315(a), (b) and (c) specifically provide that the IEPA's decisions pertaining to baseline determinations, quantification methods and practices, and BAT determinations are appealable. (PC 14 at 13.) The IEPA also notes that the approval or denial of Emission Reduction Generators (Section 205.480(f)), the approval or denial of intersector proposals (Section 205.490(e)), the authorization to gain special access to ACMA (Section 205.610(h)), and the determination that an emissions excursion has occurred as provided in Section 205.620(d), are all appeable pursuant to the proposed procedural rules. (*Id*.)

The Board finds that the appeal procedures set forth in Section 205.315 concerning the review of items in the source's CAAPP permit are sufficient, except as noted above. However, the Board finds that the appeal procedures set forth in the proposed amendments to Part 106 are insufficient. The Board will not adopt the proposed amendments of Part 106 for First Notice. Instead the Board will rely on the Board's current procedural regulations at 35 Ill. Adm. Code 105 and Section 40 of the Act for the appeal process for the IEPA's decisions in the ERMS program that are not associated with the CAAPP permit. The IEPA's proposed amendments to Part 106 creates an arbitrary and capricious standard of review concerning the IEPA's decision on proposal for an ERG and no standards for the other appeals. The Board finds that a standard of review should not be whether the IEPA's decision was arbitrary or capricious. The Appellate Court in ESG Watts v. IPCB and IEPA consolidated with IEPA v. IPCB, 286 Ill. App. 3d 325, 676 N.E.2d 299, 221 Ill. Dec. 778, stated the following:

> Generally the Board does not apply the arbitrary and capricious standard to decisions made by the Agency. Rather, the Board reviews the information which the Agency relied on in making its decision. See Alton Packaging Corp. v. Illinois Pollution Control Board, 162 Ill. App. 3d 731, 516 N.E.2d 275, 114 Ill. Dec. 120 (1987). Thereafter, the Board places the burden on the petitioner to prove that it is entitled to a permit and that the Agency's reasons for denial are either insufficient or improper. ESG Watts, Inc. v. Illinois Environmental Protection Agency, Ill. Pollution Control Bd. Op. 94-243 (Consolidated) (March 21, 1996).
>
> To require the Board to review the Agency decision under an arbitrary and capricious standard in this case would essentially remove the procedural safeguards of the administrative appeal process. The decision of the Agency

> would, in effect, be insulated, because the Board's review would be limited to a determination of whether the action was arbitrary rather than appropriate and supported by the evidence. Moreover, we are concerned that, due to the time restraints placed on the Agency, it cannot hold full hearings to develop the issues of the case. Accordingly, it is essential that the Board provide hearings and allow the petitioner an opportunity to challenge the validity of the decision made by the Agency. To require another standard of review would interrupt the administrative continuum which becomes complete after the ruling of the Board. Illinois Environmental Protection Agency v. Illinois Pollution Control Board, 138 Ill. App. 3d 550, 486 N.E.2d 293, 93 Ill. Dec. 192 (1985), *aff'd*, 115 Ill. 2d 65, 503 N.E.2d 343, 104 Ill. Dec. 786 (1986).

The Board finds that this reasoning holds true for these decisions as well. Therefore the Board will use the procedural rules at 35 Ill. Adm. Code Part 105. The Board also notes its proposed procedural rules provides procedures for the appeal of a final decision by the IEPA which are not related to a permit. (See In the Matter of: Revisions of the Board's Procedural Rules, 35 Ill. Adm. Code 101-130, October 3, 1996, R97-8.) The Board intends to amend the ERMS program so that the appeals of final decision by the IEPA are pursuant to the proposed procedural rules once they are adopted by the Board. The Board invites the IEPA and the other participants to comment on the proposed procedural rules for ERMS in that rulemaking.

Section 205.318 Certification for Exempt CAAPP Sources

This section requires any source: (1) that is located in the Chicago ozone nonattainment area; (2) that is required to obtain a CAAPP permit; and (3) has VOM emissions, but is not a participating source because its baseline emissions are less than 10 tons of VOM, to submit a certification to the IEPA by January 1, 1998. The certification shall indicate that it is not required to participate and should contain supporting documentation.

Section 205.320 Baseline Emissions

Subsection (a) establishes the threshold baseline determination for existing sources by averaging the two seasonal allotment periods with the highest VOM emissions during 1994, 1995, and 1996. Additionally, subsection (a)(2) allows a source to propose replacement years in its ERMS application within the time frame of 1990 through 1997, if such year is more reflective of historical operating conditions than in 1994, 1995, or 1996.

Subsection (b) sets forth the baseline determinations for existing sources with baseline emissions below 10 tons per season, as specified in subsection (a), that increase to 10 tons or more in any seasonal allotment period beginning with 1999, but is not a major modification. Pursuant to subsection (b), baseline emissions will be based on a source's VOM emissions for the first seasonal allotment period with emissions of 10 tons or more.

Subsection (c) provides the baseline determination for any existing source with baseline emissions below 10 tons per season, as specified in subsection (a) above, that increases to 10

tons or more in any seasonal allotment period, beginning with 1999, constitutes a major modification. The baseline emissions for such a source shall be based on its seasonal VOM emissions from the season prior to the submittal date or submittal due date of its application for the major modification, whichever occurs earlier.

Subsection (d) establishes credit for voluntary over-compliance with applicable requirements effective in 1996, provided that the over-compliance occurred after 1990. Such over-compliance will be given credit based on the production level in the baseline years and the actual emissions level compared to the allowable emissions level in 1996.

Subsection (e) identifies circumstances under which baseline emissions will be decreased. Subsection (e)(1) provides that if a source is out of compliance with any applicable requirements in any of the seasonal allotment periods used to determine its baseline, its baseline emissions will be lowered to reflect the amount of VOM emissions as if the source was in compliance. Subsection (e)(2) sets forth that if the seasonal allotment periods selected for baseline emissions do not reflect compliance with requirements effective through 1996 that became effective after any of the selected seasonal allotment periods as baselines, the source's baseline emissions will be lowered to reflect the amount of VOM emissions as if the source were in compliance. Subsection (e)(3) specifies that if in any year selected for baseline emissions a source's VOM emissions were in excess of the applicable regulations due to a variance, consent decree, or is operating pursuant to a CAAPP permit compliance schedule, the baseline emissions will be lowered to reflect the amount of VOM emission as if in compliance subject to certain requirements. Subsection (e)(4) establishes that if any year used for baseline determination operated with excess emissions due to startup, malfunction or breakdown, whether or not such emissions were pursuant to a CAAPP permit, the baseline emissions will be decreased to exclude the excess emissions.

Subsection (f) provides that for new or modified emission units that receive a construction permit prior to January 1, 1998, but do not have three years of operational data, the baseline will be determined using the two seasonal allotment periods with the highest VOM emissions from the first three complete seasonal allotment periods in which any such emission unit is operational. Furthermore, subsection (f) provides that ATUs will only be issued after the baseline determination has been made and that the source is not required to hold ATUs for the first three seasonal allotment periods in which it is operational.

The IEPA, in its Errata Sheet filed on February 24, 1997, requests that the Board make changes to subsection (f) to clarify that the adjustment allowed to baseline emissions for pending projects only applies to VOM emissions from the new emissions unit(s) or VOM attributable to the modification of an existing unit(s). (Errata at 1.)[7]

The Board finds that the language proposed by the IEPA in its Errata Sheet filed February 24, 1997, (Errata at 1) clarifies that the requirements in this subsection only pertain to emissions from a new or modified emission unit that was issued a construction permit prior

[7] The IEPA February 24, 1997 "Errata Sheet" will be referenced to as "Errata at ."

to January 1, 1998. The Board accepts the proposed changes in Section 205.320(f) made by the IEPA.

The IEPA and IERG, in their public comments, propose to amend Section 205.320 to address the situation in which a source has achieved emissions reduction credits outside of the ERMS program to meet the new source review offset requirements who then may have to purchase ATUs to address the offset requirements of the ERMS program. (PC 14 at 5-6, PC 9 at 7.) IEPA and IERG suggest that the Board add a subsection (g) which would provide that emissions reduction credits acquired pursuant to written agreement prior to January 1, 1998, for the purpose of satisfying the offset requirements of 35 Ill. Adm. Code 203 shall be included in the baseline determination. (PC 14 at 6, PC 9 at 7.)

The Board finds that allowing sources to incorporate already acquired emissions reduction credits into their baselines when a source is unable to obtain a construction permit prior to January 1, 1998, should be included in these proposed rules. IERG questioned Mr. Romaine at the February 10, 1997 hearing and Mr. Romaine said that there was no provision to protect sources from having to acquire double the amount of emissions under 35 Ill. Adm. Code Section 203 (Tr. 1-5 at 1032-1033). Therefore, the Board accepts the proposed language made by the IEPA and IERG with a minor change. In the IEPA's public comments (PC 14 at 6), the IEPA forgot to put "source" in Section 205.320(g)(1) after "prior to January 1, 1998, to the . . ." as it is in IERG's public comment (PC 9 at 7).

The Coalition asserts that a source should be able to use any year between 1990-1997 instead of being limited to only 1994-1996 when determining its baseline emissions. (PC 10 at 11.) The Coalition argues that the 1990 emissions are the baseline for the ROP requirements and the basis for the amount of reductions in the proposal. (*Id*.) The Coalition argues that since 1990 is the baseline for reductions any year's emissions after 1990 through 1997 can be used to determine baseline emissions. (*Id*. at 12.) The Coalition states that IEPA states that 1994 is the first year that they feel comfortable with their emissions data. (*Id*.) The Coalition argues that "if this is so then how can IEPA justify any reductions made since 1990." (*Id*. at 12.)

The Coalition also asserts that the owners/operators are in a better position than the IEPA to make a decision as to what is their representative emissions when determining the ERMS program baseline. (*Id*. at 13.) The Coalition argues that Section 205.320(a) does not provide a definition of what is representative and the only testimony given by the IEPA witnesses concerned strikes, natural disasters and unusual equipment failure. (*Id*.) The Coalition is concerned whether the IEPA would consider lower production levels due to low sales during the 1994 through 1996 period as "non-representative" years. (*Id*.) The Coalition concludes that expanding the years for which baseline determinations can be made to include 1990 through 1997 will eliminate an arbitrary application of the proposal. (*Id*. at 14.)

The Coalition states further "that nowhere in the CAAA or RFP[8] requirements does it say that an average of 2 years of emission data is needed to calculate the ERMS baselines. IEPA is using NSR rules to support using a 2 year average." (*Id*.) The Coalition argues that using a two year average would make sources reduce beyond ROP requirements. (*Id*. at 15.) The Coalition asserts that averaging two years emissions will always decrease the baseline. (*Id*.) Therefore, the Coalition argues that a source should be allowed to use one year's emissions to determine the baseline.

The IEPA asserts that allowing source's to use the emissions data from 1994 through 1996 and any year from 1990 through 1997 if any year between 1994 through 1996 is non-representative and averaging the two highest years to determine their baselines provides enough flexibility and assurances that unusual or abnormal practices will be considered. (PC 14 at 27.) The IEPA states that the reasoning behind the first requirement is because the ERMS rules are attempting to achieve reductions beyond those achieved with the 15% ROP in 1996. (*Id*.) The IEPA also stated that "[t]he basic principle in establishing baseline emissions is that they are representative of historical emissions" and using only one year's emissions would not be representative. (*Id*. at 32.)

In response to concerns raised at hearings that the baseline developed by the proposal will not provide enough ATUs for facilities to grow, the IEPA states that the ERMS program is intended to be a cap and trade program, if a facility wants to grow, reductions elsewhere within that facility need to be made. (*Id*. at 29.) Finally, in response to testimony concerning facilities whose emissions vary from year to year the IEPA argues that the ERMS program is better for those facilities than traditional command and control requirements because of the compliance alternative of purchasing ATUs when necessary to meet the source's emission needs. (*Id*. at 31-32.)

The Board finds that a source should not be able to use any year between 1990-1997 to determine baseline and must make a showing that the requested year(s) other than 1994 through 1996 are more representative of its emissions. The ERMS program as proposed by the IEPA is attempting to achieve further reductions from sources so that there is a decrease in VOM emissions from 1997 to 1999. It is logical to look at the 1994 through 1996 emissions in developing a historical baseline emission from which deductions are to be made in order to obtain an additional 9% reduction beyond the emission levels of 1996 to fulfill the ROP obligations. The Board finds that the proposed process by which the baseline emissions are developed provide sources sufficient options to develop its historical baseline emissions. Additionally, the Board finds that to be able to use only one year instead of averaging two years would defeat the concept that the baseline is meant to represent the source's historical emissions.

The Coalition also states that the language in Section 205.320(d) is unclear as to whether the IEPA will give sources credit for voluntary over-compliance in 1990 or after 1990 when determining the source's baseline. (PC 10 at 18.) The Coalition asserts that credit

[8] "RFP" stands for "reasonable further progress" and is equivalent to ROP.

should be given after the 1990 ozone season because the ERMS program is based on the reduction of emissions of 1990's ozone season. (*Id*. at 19.) Therefore the ERMS Coalition proposes the Board modify Section 205.320(d) to state that voluntary over-compliance be given for reductions made after September 30, 1990. (*Id*.) To conclude the Coalition states that the Board should change the proposal to: (1) eliminate the requirement that sources have to demonstrate that non-representative conditions existed in years 1994 to 1996 in order to use other years in calculating baseline emissions; (2) eliminate the requirement that sources have to average two representative years to determine the baseline emissions; and (3) allow for voluntary over-compliance to be credited if achieved after September 30, 1990 instead of after 1990. (*Id*. at 16-19.) The Coalition proposes language to address these issues. (*Id*. at 16 and 18-19.)

The IEPA did not respond in its public comments to the Coalition's comments concerning whether sources that voluntarily over-compliance between September 30, 1990 and January 1, 1991 will be given credit towards its baseline determination.

The Board finds that receiving credits for over-compliance that occurred after September 30, 1990 instead of December 31, 1990, is appropriate. Based on the record before the Board, the 1990 base year inventory was developed using 1990 emissions in tons per ozone season weekday. Therefore, credits for over-compliance can be awarded if achieved after September 30, 1990 instead of only after December 31, 1990 since those reductions occurred after the VOM emission season in which the baseline was determined. The Board amends Section 205.320(d) as follows:

> d) The baseline emissions of any participating source shall be increased for voluntary over-compliance that occurred after <u>September 30,</u> 1990 and results in a VOM emissions level that is lower than the level required by applicable requirements effective in 1996, including limitations in the source's permit(s) based on such applicable requirements. Voluntary over-compliance shall be determined in accordance with the following:

CICI suggests that language be added at Section 205.320 to allow under site specific circumstances that sources could opt out of the way their baseline is determined within the proposed rules. (PC 6 at 7.) CICI proposes that this would be similar to the Board's current adjusted standard procedures. (*Id*.) CICI states that allowing this would help sources who may otherwise have to shut down continue to operate. (*Id*.)

The IEPA did not respond in its public comments to CICI's comments concerning relief from the baseline determinations through the use of the adjusted standard procedures of Section 28.1 of the Act. 415 ILCS 5/28.1 (1996).

The Board finds that additional language is not needed to preserve a regulated source's right to file a petition for an adjusted standard pursuant to Section 28.1 of the Act.

Tenneco proposes a new section that specifies that a source's baseline will be recalculated when a determination method changes and when the USEPA promulgates a MACT or NESHAP. (PC 7 at 2-3.) Tenneco asserts that the IEPA should be required to recalculate a source's baseline, and thus revise a source's permit, when an emission determination method changes or a new MACT or NESHAP is promulgated. (*Id*. at 3.)

The IEPA did not respond in its public comments to Tenneco's comments concerning the recalculation of baseline emissions if circumstances change.

The Board finds that for any emission unit that meets the new MACT or NESHAP promulgated after 1999 by the USEPA that that emission unit should be exempted from the 12% reduction as they would if meeting a MACT or NESHAP prior to 1999. Regarding the concern over new emissions determination methods, the Board notes that there is already a provision within the proposed rules which address that concern at Section 205.337. Section 205.337 already states that if there are new emissions determination methods then the source should obtain a revised permit. The Board amends Section 205.405 to allow for sources' emission unit to be exempt as follows:

a) The following emission units or activities~~, if in operation prior to 1999,~~ shall be excluded from the VOM emissions reductions requirement specified in Section 205.400(c) and (e) of this Subpart:

Section 205.330 Emissions Determination Methods

This section establishes that a source shall determine VOM emissions during the seasonal allotment period using methods to demonstrate compliance with the ERMS program. The section states that the methods shall be as stringent as those required by any applicable requirement and/or any permit condition. The section also requires the Agency to establish the emissions determination methods in the source's CAAPP permit. Finally, the section provides, in subsections (a) through (g), some appropriate methods for emission determinations. However, this section does not mandate that a particular measurement method be used for a particular type of emission unit.

Section 205.335 Sampling, Testing, Monitoring and Recordkeeping Practices

This section provides that sources must conduct sampling, perform testing, conduct monitoring, and maintain records as necessary to support its methods used to determine its emissions. The section also requires the IEPA to specify the practices applicable to each source in each source's CAAPP permit.

Tenneco requests that the ERMS program not require additional emissions determination methods, or any additional sampling, testing, monitoring, and recordkeeping practices beyond the requirements of the CAAPP permit program (Title V of the CAA). (PC 7 at 5.) Tenneco asserts that these determination methods, sampling, testing, monitoring, and recordkeeping practices are sufficient for the ERMS program. (PC7 at 5.) Tenneco proposes

changes to Sections 205.330 and 205.335 to prevent the IEPA from proposing additional requirements. (PC 7 at 5.)

The IEPA did not respond in its public comments to Tenneco's comments concerning the requirement of additional methods or practices beyond the requirements of the CAAPP permit program.

The Board finds that changes to Sections 205.330 and 205.335 to limit the IEPA's ability to require certain monitoring or recordkeeping practices or testing or sampling methods in a source's CAAPP permit are unnecessary. Since CAAPP permits are appealable to the Board and requirements placed in the permits which the source believes to be unnecessary can be appealed to the Board, we find it unnecessary to limit emissions determination methods, or any additional sampling, testing, monitoring, and recordkeeping practices to those of the CAAPP permit program. Additionally, since the ERMS program is new and not contemplated by the CAAPP permit program, new monitoring or recordkeeping practices or testing or sampling methods may be necessary.

Section 205.337 Changes in Emissions Determinations Methods and Sampling, Testing Monitoring and Recordkeeping Practices

Subsection (a) specifies that the methods used for determining seasonal VOM emissions from a source for purposes of establishing compliance with Part 205 must be generally consistent with the methods used to establish baseline emissions.

Subsection (b) provides that the use of new emissions determination methods or practices require a revised permit if the new method or practice differs significantly than that specified in the source's CAAPP permit. Subsection (b) requires that a source obtain a revised CAAPP permit pursuant to Section 39.5 of the Act prior to relying on the modified methods or practices.

The IEPA in its public comments proposes to change this section to allow for approval of a modified method or practice and to recalculate the baseline emissions based on the approved method or practice. (PC 14 at 8.) This change would also be reflected in Section 205.400(d).

The Board finds that the IEPA should correct baseline emissions if new methods or practices emerge. IEPA stated in their public comments (PC 14 at 7-8) that they should clarify that they have the authority to correct baselines if there is a new method or practice to calculate it. The IEPA also stated that "Section 205.400(d) may be interpreted to prohibit such adjustments to allotments." So not only did the IEPA add a subsection to Section 205.337(b) to allow them to adjust baselines, but they also amended language to Section 205.400(d) that references Section 205.337(b). Additionally, the Board notes that USEPA had expressed concern over this issue (PC 13 at 2). Although the IEPA did not state this in their public comments, it appears that the requested change addresses one of Tenneco's concern

about baselines (See page 33 of the opinion). Therefore the Board accepts the proposed addition of a new subsection (b)(3) as follows:

> 3) If the Agency approves the use of a modified method or practice, the Agency is authorized to determine a corrected baseline and thereafter issue ATUs pursuant to this corrected baseline.

The Board requests the participants address at the August 19, 1997 hearing or in public comments the necessity of the language contained in Section 205.330 and Section 205.337 for purposes of clarity, intent and whether the language in those sections should be interpreted in the same manner. It appears that the language is intended to be interpreted similarly.

Subpart D Seasonal Emissions Management

Section 205.400 Seasonal Emissions Allotments

This section identifies the criteria for establishing the allotment of ATUs for all participating sources. Subsection (a) provides that each participating source will receive an allotment from the IEPA. Subsection (b) provides that each allotment issued by the IEPA except those issued pursuant to Section 205.480 and 205.490, will be valid for the seasonal allotment period in which they were issued and the next seasonal allotment period. Subsection (c) establishes the allotment to be the source's baseline emissions reduced by 12%.

Subsection (d) sets forth that the allotment of ATUs will remain at the 1999 levels unless there is a change in the baseline determination. Furthermore this subsection states that if further reductions are necessary the Agency must make a demonstration to the Board in accordance to the rulemaking provisions of Sections 27 and 28 of the Act.

Subsection (e) provides that if a baseline determination for a participating source is revised pursuant to Section 205.320(f) the allotment is reduced by 12% unless the emission unit is excluded from further reductions as set forth in Section 205.405.

Subsection (f) states that new participating sources, sources not operating prior to May 1999, will not receive an allotment but are required to hold ATUs at the end of the reconciliation period. New participating sources can purchase ATUs from the market.

Subsection (g) provides that sources that are in existence prior to May 1, 1999 and then become subject to Part 205 as a result of a major modification, will not receive an allotment of ATUs based on the emissions from the major modification but will be given an allotment based on the source's baseline emissions as determined by Section 205.320, except as provided by subsection (h) of this section.

Subsection (h) states that if a participating or new participating source submits an ATU transfer agreement where by another source is transferring ATUs to the participating or new participating source and the agreement remains in effect over a three year period, the ATUs

are automatically transferred into the participating or new participating source's transaction account established pursuant to Section 205.510. Furthermore, if the CAAPP permit for that source is revised or opened, any multiple season transfer agreement that has three or more years remaining shall be identified in the reissued or renewed CAAPP permit.

The IEPA requests that subsections (c) and (d) reflect its intent that such sources are subject to the 12% reduction, unless the source obtains an exemption from this reduction amount. (Errata at 1.)

The Board finds that the proposed changes are acceptable and are incorporated in the order. The Board also notes that we added a reference to Section 9.8 of the Act in subsection (d) as discussed on page 9.

Tenneco asserts that issued ATUs should remain permanent and not expire within two years of its issuance. (PC 7 at 1.) Tenneco claims that the IEPA has based the ERMS program on the federal trading program for SO_2 which has permanent ATUs but has not explained why the ATUs in the ERMS program are not permanent. (*Id*.) Tenneco also states that making ATUs permanent will provide relief when ATUs issued pursuant to an emission reduction generator proposal, which are only valid in the year the emissions are achieved are not approved in time to use in the year they were achieved. (*Id*.) Tenneco suggests that the proposed Section 205.400(b) be replaced with "ATUs issued during any seasonal allotment period are valid until such ATUs are retired." (*Id*.) Tenneco also requests that Section 205.400(d) specify that the IEPA may only propose future reductions of the seasonal allotment pursuant to the general rulemaking authority under Section 27 and 28 of the Act. (*Id*. at 6.)

The IEPA did not respond in its public comments to Tenneco's comments concerning ATUs being permanent versus expiring within two years as proposed.

The Board finds that the record before the Board at this time does not support making ATUs permanent. The fact that the ATUs expire should make the market more active because sources will not be able to stockpile ATUs. This activity should in turn create a greater market demand and supply of ATUs for sources to use to meet their seasonal emissions and provides ATUs for new sources to enter the Chicago nonattainment area. However, the Board invites the participants to provide further information concerning this issue at hearing scheduled for August 19, 1997 or in public comments.

The IEPA in response to the testimony of Mr. Burke of the American Lung Association Metropolitan Chicago (ALAMC), who requested that there should be a 5% reduction from unused ATUs that are banked, states that a reduction may diminish the benefit to the environment from banking and the flexibility afforded to sources that is derived from banking. (PC 14 at 44.) IEPA also states that Mr. Burke has not addressed the effect of reducing the unused ATUs that are banked on the environment if banking is not utilized by participating sources and the reduced flexibility for the participating sources. (*Id*. at 45.)

The Board finds that the record does not support making the change requested by ALAMAC in its testimony.

The Board makes the following amendments to subsection (b) as a result of our decision to issue ATUs during appeal and toll the expiration during the appeal as discussed on pages 26-27 and to remove unnecessary language.

b) Except for ATUs issued pursuant to Sections 205.315(a) and (c), 205.~~480~~500[9] and 205.~~490~~510, ATUs issued for any seasonal allotment period are valid for use during the seasonal allotment period following issuance and the next succeeding seasonal allotment period. All ATUs ~~issued by the Agency~~ shall be valid until such ATUs expire or are retired.

Section 205.405 Exclusions from Further Reductions

This section establishes exclusions for emission units that comply with various emission standards. Subsection (a) states that sources' emission units in operation prior to 1999 may be excluded from the 12% reduction set forth in Section 205.400 (c) and (e) if the emission units comply with one or more of the following; NESHAP, MACT, are direct combustion units designed and used for comfort heating purposes, fuel combustion emission units or internal engines, or emission units for which a LAER demonstration has been approved by the IEPA on or after November 15, 1990.

Subsection (b) provides that emission units in operation prior to 1999 and are using BAT shall not be subject to the 12% reduction set forth in Section 205.405 (c) and (e). This subsection also sets forth the information that is required to be submitted as part of the ERMS application by the owner or operator who is seeking the best available technology (BAT) exclusion.

Subsection (c) requires the IEPA to make its determination in a draft CAAPP permit subject to public notice and participation, accompanied by an explanation of is determination. The IEPA may make this determination pursuant to an ERMS application or an application for a modified allotment.

Subsection (d) states that a participating source may apply for an exclusion from further reductions based on meeting BAT after its baseline determination has been made by submitting an application for a modified allotment. The subsection provides that if the IEPA determines that an emission unit is using BAT the source's allotment shall be modified so that reductions will not be required from that emission unit.

[9] The Board notes that as discussed on pages 45-46 the Board renumbered certain sections of the proposal.

The IEPA requests to change the proposed subsection (a) to reflect that there is a one time reduction in 1999, any reduction will be reflected in the original baseline determination and allotment. Similarly, in subsections (b) and (d) the IEPA requests that it be changed to reflect that the one time reduction in 1999 will reflect any sources using BAT prior to 1999.

The Board finds the language of subsection (a) should be consistent with subsection (b) and that the IEPA changes are appropriate. These changes are incorporated into the attached order as follows:

a) VOM emissions from t~~T~~he following emission units or activities, if in operation prior to 1999 ~~or a replacement for such a unit,~~ shall be excluded from the VOM emissions reductions requirement specified in Section 205.400(c) and (e) of this Subpart:

b) When it is determined that an emission unit in operation prior to 1999 ~~or a replacement for such a unit~~ is ~~or will be~~ using the best available technology for controlling VOM emissions, VOM emissions from such emission units shall not be subject to the VOM emissions reductions requirement specified in Section 205.400(c) or (e) of this Subpart. The owner or operator of a source may request such exclusion from further reductions by providing the following information, in addition to the information required in Section 205.310 of this Part, in its ERMS application:

~~d) A participating source may apply for an exclusion from further reductions based on the application of the best available technology after its baseline emissions have been determined by submitting an application for a modified allotment. If the Agency determines that the emission unit is applying the best available technology in accordance with subsection (b) of this Section, such source's allotment shall be modified such that no reductions will be required beyond the actual emissions level achieved from the relevant emission unit(s) after the application of the best available technology.~~

Dart supports the adoption of the proposed exclusion of emission units that meet the BAT standard. However, Dart contends that the ERMS program should provide a rebuttable presumption that a source that has obtained an adjusted standard since 1990 meets the proposed new BAT standard. (PC 4 at 5.) Dart believes that the IEPA was not intending to force those sources which have achieved maximum level of emission reductions technologically and cost effectively to achieve even further reductions through additional technological measures. (*Id*.) Dart states that a source that has obtained an adjusted standard after 1990 has already demonstrated to the IEPA and the Board that further reductions in VOM emissions are neither technologically nor economically feasible. (*Id*. at 6.) In light of this, Dart suggests that the Board amend the definition of BAT at Section 205.130 to clearly specify that where a source has obtained a source-specific adjusted standard pursuant to Section 28.1 of the Act (415 ILCS

5/28.1(1996)), the source is automatically granted rebuttable presumption that it meets the BAT standard. (*Id*. at 7.)

In addition, Dart has asked for clarification as to whether a source with an approved BAT determination could receive credits to its baseline determination for any over compliance the source may have realized through its own initiatives over and above compliance with the technological requirements that meet BAT. (*Id*. at 6.) Dart believes that if it is the IEPA's intent that a source cannot receive credit for over compliance with regard to BAT, then the regulations must clearly reflect the proposed intent. (*Id*. at 6.)

The IEPA disagrees with Dart's position that the regulations should provide rebuttable presumption that a source with an adjusted standard meets the BAT standard. (PC 14 at 42.) The IEPA notes that the standard for granting adjusted standard relief is not based on whether further reduction of VOM is technically feasible or economically reasonable. (*Id*.) An adjusted standard may be granted if the factors relating to a subject source are substantially and significantly different than the factors weighed by the Board in adopting a rule of general applicability. (*Id*.) The IEPA argues that it cannot be presumed that a source that has obtained an adjusted standard from such rules of general applicability has demonstrated that further VOM reductions are not economically reasonable or technically feasible. (*Id*.)

The Board finds that although obtaining an adjusted standard involves the consideration of such factors as technological feasibility and economic reasonableness, the required demonstrations are not comparable to a BAT demonstration. As noted in the IEPA's testimony, the measures that would have to be evaluated included additions or enhancements to VOM control devices, changes in raw material, and other process changes. (C. Romaine's Testimony at 28.) In this regard, the IEPA notes that it will use USEPA's "Top-Down BACT Process" as set forth in USEPA's NSR Workshop Manual as guidance for evaluating alternatives to a proposed level of control. Moreover, the outcome of the BAT evaluation is set by the definition of BAT. In light of this, the Board finds that automatic grant of rebuttable presumption that an adjusted standard meets the proposed BAT standard is not justified.

The Board finds that Dart's second issue regarding the sources receiving credits for over-compliance with respect to BAT is not clear and will not make the suggested changes. The IEPA proposal allows for upward adjustment of the baseline emissions to account for voluntary over-compliance in accordance with Section 205.320. The rules give credit for any VOM emissions that have been reduced after October 1, 1990 (see page 32 of the opinion) that to go beyond compliance with the applicable rules so that the emission reductions contributes to ROP in 1999. However, in the case of BAT determination, the issue of over-compliance does not arise since by definition a BAT represents the emissions level based on maximum degree of VOM reduction.

Tenneco's comments address two issues concerning the proposed exclusion requirements in Section 205.405. First, Tenneco asks the Board to amend Section 205.405(b) to provide that any emission unit which captures and controls at least 95% of VOM emissions

meets the new BAT standard. (PC 7 at 2.) According to Tenneco, the suggested amendment would simplify the ERMS program because the Agency would not have to analyze such units under the new BAT standard. (*Id*.)

Second, Tenneco requests clarification of Section 205.405(a) as it relates to the exclusion of emission units complying with MACT standards. (*Id*.) Tenneco notes that when USEPA promulgates a MACT standard for an industrial category, it often determines that certain units in the category require controls and others do not require controls. (*Id*.) Tenneco maintains that if a facility implements MACT for an industrial category and pursuant to MACT does not place controls on certain VOM-emitting units, such units should qualify for exemption from further reduction or if the facility falls under one industrial category and it implements MACT for its category, the entire facility must be exempt from further reduction of VOM. (*Id*.)

The IEPA did not respond in its public comments to Tenneco's comments concerning whether any emission unit which captures and controls at least 95% of VOM emissions and any emission unit which meets the MACT standard meets the new BAT standard.

The Board finds that without justification that an emission unit which captures and controls at least 95% of VOM meets BAT, we will not accept Tenneco's revisions. The Board notes that the adoption of a numerical criteria may simplify the IEPA's BAT determinations, however, such criteria must be justified on a technical basis. In this regard, the case-by-case evaluation as set forth in Section 205.405 is intended to establish a technically justifiable emission level. The Board's finding does not preclude either the IEPA or any other party from presenting justification for a numerical standard at the upcoming hearing for future consideration of the Board.

The Board also finds that Tenneco's interpretation of the exclusion of emission units complying with MACT standards at Section 205.405(a)(1) does not appear to reflect the proposed intent. As such, the Board will not accept the proposed changes by Tenneco. The IEPA's testimony indicates that the exclusion is based on applicability of MACT to an emission unit and not an industrial category. (C. Romaine's Testimony at 25.) The IEPA notes that this exclusion was based on Section 9.8(c)(4) of the Act, which clearly specifies that those emission units which have reduced emissions through the application of MACT or NESHAP shall be given credit or granted exclusion in the ERMS. However, the Board requests the IEPA and any other participants to respond to whether emission unit(s) under an industrial category where a MACT has been demonstrated should receive the same treatment as when a MACT has been approved for individual emission units at the August 19, 1997, hearing or in public comments.

The Coalition states that the definition of BAT, as proposed by the Agency, is ambiguous and gives sources subject to the ERMS program little, if any, guidance as to what will constitute BAT. (PC 10 at 20.) In this regard, the Coalition notes that the proposal does not define "maximum degree of reduction." (*Id*.) Further, the Coalition states that even though the IEPA admitted that the BAT determination based upon "the best controlled similar

unit" should consider technical or economic feasibility, the proposed intent is not reflected in the statement of reasons. (*Id*.) The Coalition also notes that while BAT is patterned after BACT, the definition of BAT does not refer to BACT or that in making a BAT determination, IEPA will rely upon an analysis of control achieved at other "similar units" upon which BACT determinations are predicated. (*Id*. at 22.) The Coalition contends that without further guidance in the actual rules on what constitutes BAT, several members of the coalition, who have achieved maximum degree of VOM emissions reductions that are technically feasible, could be penalized for reducing emissions beyond the currently required levels. (*Id*. at 20.)

In order to address its concerns regarding the proposed definition of BAT, the Coalition has proposed the following changes:

> "Best available technology" means an emission level based on the maximum degree of reduction of VOM emitted which the Agency determines through application of production processes and available methods, systems and techniques for control of VOM is technically and economically feasible for the specific emission unit taking into account energy, environmental and economic impacts, and considering the features and production process and control methods, systems and techniques already used for the unit and achieved at other similar units. In no event shall application of "best available technology" result in emissions of VOM which exceed the emissions allowed by any standard established pursuant to Section 111 of the Clean Air Act, if such a standard is applicable to the category of emission unit nor shall "best available technology" be more stringent than the level of emissions which result from similar sources which have met best available control technology standards. (*Id*. at 22.)

The Coalition asserts that the above changes clarify that BAT is patterned after BACT, BAT is less stringent than BACT and LAER, BAT is not the level of emissions control at the "Best controlled similar unit," but the Agency shall rely on such levels while also considering technical and economic feasibility. (*Id*. at 23.)

The IEPA did not respond in its public comments to the Coalition's requested changes in the definition of best available technology.

The Board finds that the Coalition raised some valid concerns regarding the definition of BAT, however upon review, no further amendments are necessary. As stated above, the Coalition contends that the proposed definition of BAT is ambiguous, the Board notes that the definition of BAT states clearly that the BAT determinations will be made on a case-by-case basis. The IEPA clarified that a similar emission unit should have the same economic circumstances as the emission unit being evaluated for a BAT determination. (Tr. at 1081.) Therefore, the Board concludes that the "maximum degree of VOM reduction" would be determined only upon consideration of the various factors set forth in the definition including, but not limited to, technical and economic feasibility on a case-by-case basis. Thus the Board finds that the definition of BAT does not need to be amended as suggested concerning this issue.

With regards to the Coalition's second concern of how BAT relates to BACT, the IEPA states that although the definition of BAT is derived from the definition of BACT, they are not the same. (Tr. at 528.) BAT is a component of the ERMS program that focuses on existing sources, while BACT is a component of the PSD program that applies to proposed new and modified sources. (*Id.* at 528-529.) BAT requires consideration of the control features present on a emission unit and the impacts associated with upgrading or replacing those features. However, the Agency did admit that the emissions level based on a BAT determination would be at the same level of BACT or less stringent. (Tr. 1-5 at 1072-1095.) As a result the Board finds that the changes suggested by the Coalition relating to BACT have merit. However, since this issue has not been addressed by the IEPA and the Coalition has not addressed whether emission units which have met BACT upon commencement are still achieving BACT for that emission unit, the Board requests the participants to address this issue at the hearing scheduled for August 19, 1997. Additionally, instead of adding to the definition of BAT as suggested by the Coalition, the Board would rather amend Section 205.405(a) by adding a new subsection (a)(4) that would exclude emission units that will achieve or have achieved BACT. The Board requests the participants address this approach to amending the proposed rules to address this issue.

Section 205.410 Participating Source Shutdowns

This section provides procedures for participating sources that shut down all operations and withdraw their CAAPP permits. Subsection (a) provides that the allotments of such sources will be allocated with 80% of ATUs issued to the owner or operator of the source and 20% issued to the ACMA. Subsection (b) requires the owner or operator who has shut down a source and withdrawn its CAAPP permit to file a written request to have its ERMS program status changed from a participating source to a general participant. Subsection (c) allows the owner or operator of a participating source which shuts down to authorize the future ATUs to the transaction account of another participating source, new participating source or general participant by submitting a transfer agreement authorizing permanent transfer of all future ATUs. Subsection (c) requires the CAAPP permit of the participating source or new participating source which receives the permanent transfer to be modified to reflect the transfer.

CICI and Tenneco requests that a participating source retain 100% of the ATUs if the source shuts down instead of retaining only 80% with the remaining 20% being placed in the ACMA. (PC 6 at 6.) CICI states that "[i]f a source is forced to shut down due to regulatory requirements placed upon it because it is located in a nonattainment area and because it must compete with sources which need not meet such requirements, the minor amount of recompense provided by the sale of its baseline emission units could hardly be classified as unjust enrichment." (*Id.*) Tenneco states that it is not necessary for the IEPA to take 20% of the ATUs and place them into ACMA. (PC 7 at 4.)

The IEPA did not respond in its public comments to either CICI's or Tenneco's comments that a source that shut downs should retain 100% of its ATUs. In response to the

ALAMC objections that 20% of a shutdown source goes into the ACMA and 80% is retained by the source, the IEPA states that the proposed split is a compromise between the regulated sources and ALAMC. (PC 14 at 45-46.) The IEPA asserts that the split provides assurance that there will be ATUs available for purchase. (*Id*. at 45.) Additionally, in the prefiled testimony for the IEPA from Mr. Romaine dated January 9, 1997, it was explained that the 80/20 split was a compromise between two points of view. Mr. Romaine states that the first point of view is that it is improper for a person to receive credits for its past emissions as a consequence of a shutdown, as the person had no right to emit in the first place. Mr. Romaine states that sources are allowed to emit and consume the air quality resource, which belongs to the people as a whole, in exchange for the benefits provided to the people through a better economy. However, Mr. Romaine states that when a source permanently shuts down, the relationship between the emitter and the public ceases to exit and the air resource should revert to the public. (Exh.32(b) at 18.)

Mr. Romaine states that the second point of view is that the shutdown of a participating source under the ERMS program should be treated no differently than an emissions reduction accomplished by a switch from an emitting to a non-emitting process. Mr. Romaine asserts that "[b]ecause sources do more than shutdown, they relocate, they merge and consolidate, they go into new markets, etc., it will be critical for businesses to receive allotment trading unit ("ATUs") under the ERMS to allow them to continue to invest in the Chicago-area economy." (Id. at 19.) Mr. Romaine states that the ERMS program will be most effective in identifying the least-expensive emissions reduction if ATUs are left in private hands and the sources where ATUs have the most value will receive the shutdown source's ATUs which will result in the most benefit to the public. (Exh.32(b) at 19.)

Mr. Romaine summarizes that the IEPA finds merit with both positions: "on one hand, the ERMS should not be an incentive for a source to close its doors, on the other hand, the ERMS should not prevent continued investment in the local economy by persons after they shutdown operations at a source or by others looking to invest in the local economy by building new facilities or modifying existing ones." (*Id*. at 19.)Mr. Romaine concludes that the IEPA finds it reasonable that some of the ATUs resulting from shutdown contribute to an air quality improvement or are available to other persons who might be able to benefit from them. The IEPA solution was to deposit 20% of the ATUs into ACMA and allot 80% to the source that shuts down. (See generally Exh.32(b) at 19-20.)

The Board finds that none of the parties have stated sufficient reasons to change the proposed rules that are based on this compromise of the two points of view. CICI's arguments do not explain why a source should receive the full benefit of the ERMS program after it ceases to participate. The Board finds merit as did the IEPA in that there are conflicting rights to the ATUs which are allotted to the sources under the ERMS program which would not exist otherwise. As such the Board will not change the treatment of the ATUs when a source shutdown occurs.

Sun Chemical requests the Board to clarify the manner in which participating sources are to be consolidated under the ERMS program. (PC 11 at 4.) Specifically, Sun Chemical

would like the regulations to reflect that transfer of operations from one facility to another facility within the nonattainment area should not be considered a "shut down" for purposes of Section 205.410. (*Id*. at 5.) Sun Chemical asserts that this may discourage the consolidation of facilities in the nonattainment area thereby forgoing any efficiencies of the consolidation and any potential environmental benefits. (*Id*.)

The IEPA did not respond in its public comments to Sun Chemical's comments that a source that consolidates should not be considered as a source shutdown.

The Board finds that a participating source that is consolidated with another participating source which are under common control of the same persons or persons under common control should not be considered a shutdown for the purposes of Section 205.410. It is the Board's intent to use the phrase "are under common control of the same persons or persons under common control" from the definition of "source" as set forth in Section 39.5(1) of the Act (415 ILCS 5/39.5(1) (1996)) and used in the CAAPP permit program. The overall VOM emissions for the Chicago nonattainment area should not be affected if the consolidation of commonly owned sources are not treated as shutdowns since both sources must be participating sources. Additionally, the compromise of the 80\20 split of ATUs when a source shutdown does not apply since the common owner will remain in the ERMS program. The Board amends Section 205.410 as follows:

a) If a participating source shuts down all operations at the source, and withdraws its permit or its permit is revoked or terminates, allotments issued to such a source for each seasonal allotment period after the shutdown occurred shall be subject to the following except as provided in subsection (d):

1) 80 percent of all such ATUs shall continue to be allotted to the owner or operator of such source or its duly authorized recipient; and

2) 20 percent of all such ATUs shall be issued to the ACMA.

d) The consolidation of operations of two or more participating sources shall not be considered a source shutdown for the source that withdraws its permit or its permit is revoked or terminates if the participating sources are under common control of the same persons or persons under common control. In the event of such a consolidation, 100 percent of the participating source's allotment of ATUs shall be transferred to the participating source that remains in operation. The transfer of the ATUs, pursuant to this subsection, shall be done pursuant to subsection (c) of this Section.

Subpart E Alternative ATU Generation

Section 205.480 Emissions Reduction Generators

This section allows permitted sources in the nonattainment area that are not required to participate in the ERMS program to generate ATUs based on emissions reductions achieved at the source. A source which reduces emissions is referred to as an "emissions reduction generator" (ERG). An ERG that receives ATUs is classified as a general participant. Subsection (a) provides that an ERG will receive ATUs if: (1) based on the same actual production rate, VOM emissions at the source for any seasonal allotment period beginning in 1999 are or will be lower due to the use of technology or materials at the source than if operating at the same production rate at the emissions level allowed by applicable requirements effective in 1996, provided such reductions occurred after 1990; (2) a source shuts down a portion or all of its operations after 1996, and the source demonstrates that the VOM emissions from those activities will not be distributed elsewhere within the Chicago ozone nonattainment area such as when gasoline stations, auto repair facilities and dry cleaners shut down; and (3) a source curtails its seasonal production activity resulting in actual VOM emissions reductions, calculated based on emissions from the two previous seasonal allotment periods, and that the VOM emissions from the curtailed activity or activities will not be distributed elsewhere within the Chicago ozone nonattainment area.

Subsection (b) requires 20% of the ATUs be distributed to the ACMA if the reductions from ERG is the result of a shutdown.

Subsection (c) provides that any proposal based on seasonal emission reductions of 10 tons or more shall be subject to the public notice requirements of Section 39.5 of the Act.

Subsection (d) identifies what information must be submitted in a proposal pursuant to this Section.

Subsection (e)[10] allows any such source to modify its permit to reflect its reduced seasonal VOM emissions level.

Subsection (f) provides procedures for when an ERG does not modify its operating permit pursuant to subsection (e) or experiences a shutdown pursuant to subsection (a) and has no actual emissions data. The procedure requires the IEPA to issue preliminary determinations as to the approval of a proposal. The IEPA cannot make a final determination as to the source's proposal pursuant to subsection (g) until actual emissions data are obtained.

Subsection (g) establishes the time frames in which the IEPA is allowed to review proposals submitted pursuant to this section and references the appeal procedures pursuant to the proposed 35 Ill. Adm. Code 106.940.

---

[10] The Board's discussion of subsections (a) through (h) reflects the proper headings for this section as the IEPA requested the Board to correct in its Errata Sheet filed on February 24, 1997.

Subsection (h) specifies when ATUs will be issued based on an ERG proposal, which is after actual emissions data are evaluated, unless, as explained above, the source has obtained a modified permit pursuant to subsection (e).

The Board has renumbered the remaining sections to the rulemaking as a result of the proposed Subpart D and Subpart E using the four hundred (400) series in the numbering scheme. Different subparts should use different hundred series in their numbering. This Section 205.480 will be renumbered as "205.500." The rest of the opinion will indicate the number changes and the order has been changed to reflect this renumbering.

The IEPA requests the Board to amend subsection (a)(1) to include that in order to qualify as a ERG the VOM emissions at the source must be lower than that required by any requirements included in the State Implementation Plan. (Errata at 3.) Additionally, the IEPA requests the Board to correct the subsection headings starting with the second subsection (d) and continuing on through the section.

The Board finds that emission reductions that a source intends to use for an ERG should be lower than any requirements effective in 1996 or are lower than those included in Illinois' State Implementation Plan (SIP). With the IEPA filing a SIP with the USEPA at the end of this year, there are other requirements within the SIP for other sources (mobile and area) to reduce VOM emissions. It would not be beneficial to the environment if emission reductions were used for an ERG that were not lower than requirements effective in 1996 or are included in Illinois' SIP because then those reductions would be counted twice towards overall attainment. Therefore, the Board accepts the proposed amendments to Section 205.480(a)(1) made by the IEPA in their Errata Sheet filed on February 24, 1997 (Errata at 1).

Sun Chemical requests the Board to amend Section 205.480 (renumbered as Section 205.500) so that sources outside of the nonattainment area may be classified as ERGs. (PC 11 at 6.) Sun Chemical states that the IEPA has recognized that reductions from outside the nonattainment area are necessary to achieve the NAAQS for ozone and that the USEPA has recognized the benefits of emission reductions from outside of a nonattainment area. (*Id*.) Sun Chemical asserts that the IEPA has stated that it will propose amendments to the ERMS program to allow for emissions reduction generators to be from the attainment area consistent with the findings of OTAG and the USEPA policy. (*Id*. at 7.) Sun Chemical urges the Board to revise the proposed language now to allow for ERGs to be located in the attainment area so that the associated benefits can be realized with the start of the ERMS program rather than later. (*Id*.)

The Board finds that it would be premature to expand the proposed ERMS program to sources outside of the Chicago nonattainment area for similar reasons discussed on page 20 of the opinion. The Board finds that while the IEPA is making assumptions that VOM from outside the nonattainment area will be reduced, to allow ERGs to be outside of the nonattainment area could prohibit the State from fulfilling its obligations concerning the 9% ROP. Sources outside the nonattainment area have not been considered in the State's plan to

achieve the 9% ROP and as such emissions being redistributed into the nonattainment area could cause an increase in VOM emissions in the nonattainment area which could cause the VOM emissions to exceed the State's target goal to achieve the 9% ROP.

Sun Chemical also requests the Board to clarify that redistribution of ATUs from the consolidation of facilities in the nonattainment area may be done through the use of Section 205.480. (*Id*.) Sun Chemical states that Section 205.480(a)(2) (renumbered as Section 205.500(a)(2)) appears to prohibit the issuance of ATUs from a source that shuts down if the ATUs are redistributed to a participating source in the nonattainment area. (*Id*.)

Similar to its requests for the Board to clarify the manner in which participating sources are to be consolidated under the ERMS program pursuant to Section 205.410, Participating Source Shutdowns, Sun Chemical requests that the Board clarify Section 205.480(b) (renumbered as Section 205.500(b)) so that consolidation of facilities is not considered a shutdown. (*Id*.) Sun Chemical asserts that this may discourage the consolidation of facilities in the nonattainment area thereby forgoing any efficiencies of the consolidation and any potential environmental benefits. (*Id*. at 9.) Additionally, Sun Chemical argues that consolidated facilities where the facility being expired does not have a CAAPP permit the company should receive 100% of the ATUs issued for the ERG. (*Id*. at 9.)

The IEPA did not respond in its public comments to Sun Chemicals comments concerning whether a source that is outside the nonattainment area can participate as an ERG, whether a source that consolidates should not be considered a source shutdown, and whether a source should retain a 100% of its ATUs when it shuts down. However, the IEPA provided testimony that "ATUs can only be issued by the Illinois EPA for an ERG if a source shows that a real surplus reduction in VOM emissions is being achieved due to improvements in VOM control measures since 1990 so that the emissions reduction contributes to ROP in the 1999 or a subsequent season or seasons and that the amount of such emissions reduction can be reliably determined." (Exh. 32(b) at 25.) Furthermore, the IEPA testified that "[f]or a shutdown or curtailment to be recognized, the underlying activity cannot have been distributed elsewhere in the Chicago ozone nonattainment area" (Exh.32(b) at 26.) The IEPA asserts that "[t]his point must be explicitly considered for an ERG because the emissions from activities at non-participating sources are not part of the pool of VOM emissions at participating and new participating sources, which is explicitly addressed by the ERMS." (Exh.32(b) at 26.)

The Board notes that the emissions of an ERG in the nonattainment area are calculated in the total VOM emissions and if the emissions from the ERG are redistributed to the participating source that the ERG is being consolidated with, the participating source will only receive ATUs equal to the amount of redistributed emissions from the ERG. As a result there should be an overall zero gain of VOM emissions in the nonattainment area. However, the Board notes that emissions from sources outside the nonattainment area are not part of the overall VOM emissions so a demonstration of an overall reduction may be impossible if sources outside of the nonattainment area are allowed to be ERGs. The Board requests the participants to address this issue at the August 19, 1997 hearing or in public comments.

Section 205.490 (renumbered as "205.510") Inter-Sector Transactions

This section provides an opportunity to generate ATUs based on VOM emissions reductions that occur in non-point source sectors, such as from mobile or area sources. Two types of proposals can be submitted. First, subsection (a) provides that proposals can be based on emission reductions achieved in accordance with regulations, such as a vehicle scrappage program. Second, subsection (b) allows proposals to be submitted that include other VOM emissions reductions projects from area or mobile sources such as an employee commute option systems.

Tenneco requests the Board to amend Section 205.490 (renumbered as "205.510") so that it clearly states that emission sources may receive ATUs for intersector transactions based on employee commute options program. (PC 7 at 5.) Tenneco asserts that this may be an incentive for employers to implement an employee commute options program, as suggested under the repealed Illinois Employee Commute Options Act and related Department of Transportation regulations. (*Id*.)

The IEPA did not respond in its public comments to Tenneco's comments requesting that intersector transactions based on employee commute options program be clearly stated as a option of intersector transactions.

The Board finds that there is no need to expressly state that reductions generated through an employee commute options program are allowed for Inter-Sector Transactions. Section 205.490(b) (renumbered as "205.510(b)") allows for proposals for reductions generated beyond the mandatory applicable regulations that are not based on any particular regulation. Section 205.490(c) (renumbered as "205.510(c)") states that no ATUs shall be issued based on mobile or area source VOM emission reductions unless approved by the IEPA. There is no indication that Section 205.490 (renumbered as "205.510") prohibits the use of an employee commute options program. Therefore no amendments are necessary.

The Board notes that it made minor non-substantive additions to subsection (b).

Subpart F Market Transactions

Section 205.500 (renumbered as "205.600") ERMS Databases

This section establishes databases that will be used to implement the ERMS program. Separate databases will be established for information that is public and information that is confidential. The public will have access to a bulletin board that will be maintained by the IEPA. Subsection (a) identifies what information is to be maintained on the bulletin board. Subsection (b) requires the IEPA to maintain a confidential transaction account database that will be a closed access system in which information about each account held under the system will be stored. Subsection (c) provides that the IEPA shall separately maintain a listing of all ATUs expired or retired within the most recent five years that also includes the expiration or retirement date.

Both the IEPA and IERG have commented that they have reached an agreement as to whether the market price should be posted on the database. (PC 14 at 8-9, and PC 8 at 5-6.) Both have agreed to add the following as a new subsection to Section 205.500(a) (renumbered as "205.600(a)):

> (4) Posted each week during the reconciliation period and no less than monthly at all other times, the average price paid for ATUs transferred the previous week or the previous month, as appropriate.

IERG states that without this information there is no real market price established because buyers will not have the necessary information to determine their appropriate action. (PC 8 at 5-6.) The IEPA agrees that posting this information may help facilitate the market system. (PC 14 at 9.)

The Board finds that in order to generate market prices without causing the transaction costs of the ERMS program to increase for individual sources the database should include the average price paid for an ATU. Therefore the Board agrees with IERG and IEPA and will incorporate the requested amendments in the attached order.

Additionally, subsections (d)(3) and (4) were amended by the Board for purposes of clarification by altering the sentence order.

Section 205.510 (renumbered as "205.610") Application for Transaction Account

All participating sources, new participating sources or general participants are required to apply for and obtain a transaction account in order to trade in the ERMS market. Subsection (b) identifies the information required in an application for a transaction account. Subsection (c) establishes a new class of participant which is identified as "special participant." A special participant may include any person that buys and retires ATUs. Special participants are required to register but are not required to obtain a transaction account and are prohibited from selling ATUs.

Section 205.520 (renumbered as "205.620") Account Officer

Subsection (a) requires each market participant to have an account officer assigned to its transaction account. Additionally, subsection (a) provides that an account officer, who has been approved by the IEPA and met certain requirements such as completing a training course, must certify each transaction and any other document pertaining to the transaction account. Subsection (b) provides the requirements of the training course. Subsection (c) is a disclaimer that the IEPA and the State of Illinois do not endorse or guarantee the conduct of the approved account officers. Subsection (d) creates an expedited approval process for account officers.

Section 205.530 (renumbered as "205.630") ATU Transaction Procedures

This section establishes the procedures for ATU transactions under the system. Subsection (a) provides the requirements of an ATU transfer. Those requirements include that a transfer must be properly authorized by the relevant account officers, that multiple year transfers are allowed, and the ATUs involved must be identified and entered into the transaction account database. Subsection (b) requires the account officer to report to the IEPA the price of the ATUs and indicate whether any considerations other than the purchase price were involved in the transactions.

Subsection (c) sets forth the eligibility requirements for ATU transactions; the ATUs cannot be retired or expired, the transaction has to involve at least one ATU; the ATUs involved must be shown on the transaction account database.

Subsection (d) identifies the transaction account database as the "Official Record of the Transaction" and how account officers may access the transaction account database.

The IEPA requests the Board to correct a typographical error in subsection (a)(3). (Errata at 4.)

The Board finds that the requested correction by the IEPA clarifies subsection (e)(3) and is incorporated in the attached order.

Subpart G Performance Accountability

Section 205.600 (renumbered as "205.700") Compliance Accounting

Subsection (a) requires sources to maintain a master file of records needed to verify compliance with Part 205. Subsection (b) provides for the inspection of these files and the source's premises by the IEPA. It also requires the IEPA to issue a report of its finding to the source and make those findings available to the public. Subsection (c) states that nothing in Part 205 limits or affects the sources' obligation to allow inspections under any other State or Federal laws or regulations.

Section 205.610 (renumbered as "205.710") Alternative Compliance Market Account (ACMA). Subsection (a) creates ACMA, which is a secondary source of ATUs for the affected sources. Subsection (b) provides that the ACMA will primarily be stocked by depositing one percent of ATUs from each allotment and by retaining a portion of ATUs from source shut downs pursuant to Sections 205.410(a) and 205.480(b) (renumbered as “205.500(b)). Additionally, this subsection allows for ATUs to be placed into the ACMA as a result of voluntary contributions and the IEPA's purchasing of ATUs. There are two methods to access ACMA, regular access and special access, which are identified in subsections (c) and (d).

Subsection (c) provides that regular access is available during each reconciliation period when there is a sufficient positive balance in the ACMA to fulfill the requesting source’s needs. The subsection requires the IEPA to notify the source within 15 days of receipt of the

source's request to gain access to the ACMA if access is available. Pursuant to this subsection, under regular access, sources may purchase ATUs at the rate of $1,000 per ATU or two times the market value, as determined by the IEPA, whichever is less.

Subsection (d) establishes that special access to ACMA is available when there is an insufficient amount of ATUs in the ACMA to fulfill the requesting source's needs. To access the ACMA account under the special access provisions set forth in subsection (d), a source must demonstrate that it was not able to obtain ATUs on the market and that it needs ATUs to avoid an emissions excursion. Special access is limited to an amount equivalent to one percent of the aggregate allotment for the next season. Pursuant to special access, sources may purchase ATUs at the rate of $1,100 per ATU or 2.5 times the market value, as determined by the IEPA, whichever is less. If special access is obtained an ATU deficit for next season may result which must be corrected pursuant to subsection (e). Subsection (d) also requires the IEPA to provide written notice of its determination as to special access and provides an opportunity for Board review of this determination.

Subsection (e) establishes the procedures by which the deficit created by the use of the ACMA pursuant to the special access provisions is replenished. To correct this deficit, the subsection provides that after the conclusion of the reconciliation period, the IEPA will initially evaluate all transaction accounts to determine if any ATUs have expired and apply expired ATUs to cover the deficit amount from special ACMA access. As another alternative, the subsection also provides that the IEPA may credit the ACMA with up to one percent of ATUs from each source’s allotment from the next seasonal allotment period.

Subsection (f) provides that the IEPA may use the money generated from the sale of ATUs from the ACMA to generate VOM reductions and purchase ATUs. The subsection also provides that if the ACMA has a deficit balance the IEPA shall use the money to create further emission reductions to correct the deficit.

Subsection (g) sets forth that new participating sources, sources that are operational after May 1999, are limited to access the ACMA until after the seasonal period of 2002 and to no more than 30% of the ACMA balance at the start of each seasonal period unless ATUs are available after access by all participating sources. The subsection additionally limits new participating sources to only 50% of the balance of ACMA if all participating sources have already accessed ACMA.

Subsection (h) provides that if the IEPA denies special access, any source may appeal to the Board for review pursuant to the proposed procedural rules.

The IEPA requests that the Board amend this section by adding a new subsection (b) which provides that ATUs in the ACMA do not expire until purchased. Once purchased the ATUs must be used for the preceding or next seasonal allotment period. The IEPA states that this new subsection (b) was originally intended to be part of the proposal but was not included. (Errata 5-6.) Additionally, the IEPA requests the Board to correct an improper citation in subsection (e)(3). (*Id*.)

The Board finds that the requested change is appropriate and will be incorporated into the attached order. The Board finds that the inclusion of provision which causes ATUs in the ACMA to be permanent until purchased will not effect the overall reduction and provides the necessary insurance for sources that ATUs will be available in those circumstances when ATUs will not be available in the market.

At hearing IERG proposed that the cost of an ATU from ACMA should be lower than what was proposed by the IEPA. (PC 9 at 6.) IERG states in its public comment that the IEPA has agreed that the price of an ATU for regular access to ACMA should be 1.5 times the market price and that for special access the price will be 2 times the market price. (*Id*.)

IEPA states that establishing a higher price for ATUs in the ACMA is important to discourage the use of ACMA instead of the market and to build in the transaction costs associated with the market which are not associated with purchasing from the ACMA. (PC 14 at 9-10.) The IEPA states that the multipliers agreed to by IERG and itself assures market viability. (*Id*. at 10-11.)

The Board finds that the agreement to lower the purchase price of ATUs from the ACMA is acceptable and will be incorporated into the attached order. The Board finds that the lower cost will still achieve the goals of addressing the reduced transaction coats associated with purchasing ATUs from the ACMA and discouraging the use of ACMA.

In response to ALAMC comments that the ACMA should be reduced as the overall 12% emission cap is reduced, the IEPA states that at hearing ALAMC stated that this is only relevant if the 12% cap is reduced which is not being done in this proposal. (PC 14 at 44.)

The Board finds that this issue was addressed at hearing and that nothing further need to be addressed.

The Board notes that it amended Section 205.610(e)(4) (renumbered as "205.710(e)(4)) to require the IEPA to notify a source if special access is available as follows:

> 4) The Agency shall provide written notification, within 15 days of receipt of any request for special access to the ACMA, allowing or denying special access to the ACMA to any participating source requesting such access. If the Agency denies such access, this written notification shall include its reasons for denying access.

Section 205.620 (renumbered as "205.720") Emissions Excursion Compensation

This section provides the procedures for emissions excursion compensation from participating sources. An emissions excursion occurs when a source fails to hold the required number of ATUs at the end of a reconciliation period. After sources submit their seasonal component of the annual emissions report by the end of November, the IEPA will evaluate the

reports and review the amount of VOM emissions from the previous season for each source. Subsection (a) provides that if a source does not hold sufficient ATUs to account for its seasonal VOM emissions from the previous season, the IEPA shall issue an excursion compensation notice to the source. The source, pursuant to subsection (b), is required to purchase ATUs from the ACMA in an amount 1.2 times the emissions excursion, which is increased to 1.5 times the amount of the excursion with the second consecutive excursion. Additionally, the subsection provides that if the ACMA is deficient, the IEPA shall deduct the necessary ATUs from the source's next year's seasonal allotment.

Subsection (c) allows a source within 15 days of receipt of the IEPA notice to elect to have ATUs to cover the excursion compensation amount withheld from its next seasonal allotment rather than purchasing ATUs from the ACMA.

Pursuant to subsection (d) the IEPA's determination that an emissions excursion occurred can be reviewed by the Board pursuant to the proposed procedural rules. Subsection (e) provides that if the Board review is requested, ATUs in an amount equal to the excursion as set forth in subsection (b), will be set aside from the source's next allotment if the matter is not resolved prior to that time. Pursuant to subsection (e), if the Board determines that an excursion has not occurred, the ATUs will be returned to the source's transaction account and if the Board upholds the IEPA's decision, the ATUs withheld will be retired.

Subsection (f) provides that sources that provide emissions excursion compensation will not be subject to enforcement authority granted to the State or any person under applicable State or Federal laws or regulations or permit conditions. However, this subsection limits this provision to emissions excursions.

Tenneco requests that Section 205.620 (renumbered as "205.720") be amended so that a source is not required to pay a penalty when acquiring ATUs from the ACMA after the reconciliation period if the source diligently, but unsuccessfully, attempted to purchase ATUs from the market or the ACMA. (PC 7 at 4.) Tenneco asserts that sources should not be penalized if no ATUs were available in the market or the ACMA. (*Id*.)

The IEPA did not respond in its public comments to Tenneco's comments requesting that there be no penalty for sources who have diligently, but unsuccessfully, attempted to purchase ATUs from the market or the ACMA.

The Board believes that such circumstance is highly unlikely to happen and will not amend the regulations to address such a limited possibility without further information. The Board requests the participants to address this at the August 19, 1997 hearing or in public comments.

Section 205.630 (renumbered as "205.730") Excursion Reporting

This section requires a source to submit additional information as required by its permit pursuant to Section 39.5(7)(f) of the Act if the source experiences more than one emissions excursion. 415 ILCS 5/39.5(7)(f)(1996).

Section 205.640 (renumbered as "205.740") Enforcement Authority

This section states that Part 205 does not limit the State's or federal government's authority to seek penalties and injunctive relief for any violation except for Section 205.620(f).

Section 205.650 (renumbered as "205.750") Emergency Conditions

This section provides procedures for sources to follow if they have experienced an emergency during the seasonal allotment period. Pursuant to subsection (a), sources are required to notify the IEPA within two days of the emergency by filing an initial emergency condition report. The initial emergency condition report shall contain information sufficient to fulfill the notice requirements of Section 39.5(7)(k) of the Act. (415 ILCS 5/39.5(7)(k).) Subsection (a) also identifies several informational requirements for the final report. Sources are allowed to supplement the initial emergency condition report within 10 days after the conclusion of the emergency pursuant to subsection (b).

Subsection (c) requires the IEPA to approve, conditionally approve or reject the final report within 30 days of receipt. If the IEPA's decision is to concur, the source is not required to hold ATUs for the excess VOM emissions attributable to the emergency. If the Agency approves with conditions or rejects the emergency conditions report, the source shall be required to hold ATUs by the end of the reconciliation period in an amount not less than the emissions identified as excess in the emergency conditions report or provide emissions excursion compensation in accordance with Section 205.620 (renumbered as “205.720”), if an emissions excursion occurred. If the Agency approves with conditions an emergency conditions report, the Agency must identify in its written notice the amount of VOM emissions that are not attributable to an emergency. If the Agency approves with conditions or concurs with a source’s emergency conditions report, the source may raise the emergency as an affirmative defense pursuant to Section 39.5(7)(k) of the Act (415 ILCS 5/39.5(7)(k)) in any action brought for noncompliance with this Part or an action brought to review the Agency’s issuance of an Excursion Compensation Notice, as provided in Section 205.620(d) (renumbered as “205.720(d)) of this Subpart.

Section 205.660 (renumbered as "205.760") Market System Review Procedures

This section provides the basic elements of an annual review of the ERMS program that the IEPA will conduct. The review will be made available to the public on May 15 the year after the seasonal allotment period that is under review.

The Board also received public comments that do not address particular sections or statutory language. The City stated that it has supported the concept of emissions trading and believes that the IEPA's proposal is a fair and equitable approach. (PC 1 at 1-2.) In its public

comments, CommEd compares the ERMS program proposal with the SO_2 trading program and concludes that the SO_2 trading program has been a success for the utility industry and since the ERMS program has a similar structure it will also be successful. (PC 2 at 4.) Mr. Trepanier filed two public comments, one, as already mentioned, was his pre-filed testimony filed on April 18, 1997 (PC 3), and another which requests that another public hearing be held so that he may testify. (PC 16 at 1-2.) In its public comments, 3M states general support for the IEPA proposal. (PC 12 at 3.) The USEPA states that it shares IEPA's belief that this approach has the promise of maximizing the flexibility that affected sources have in achieving these emission reductions and that this approach provides incentives for keeping emissions at a minimum. (PC 13 at 1.) The USEPA also notes that it has reviewed many drafts and suggested certain changes such as when there are changes in the methods used to determine seasonal emissions could warrant changes in the baseline for which the IEPA has agreed. (PC 13 at 2.) Finally, the USEPA reiterates the importance of a timely adoption of the proposal. (PC 13 at 2.) The Steel Group, in stating its general support for the ERMS program, specifically urges the Board to adopt the exclusion provisions in Section 205.405. (PC 15 at 1-2.)

Part 106 Procedural Rules

As noted earlier in the opinion the IEPA is also proposing to amend Part 106 of the Board's procedural rules to provide for an appeal process under the ERMS program for certain of its final determinations. The Board received no public comments pertaining to the proposed amendments. As discussed previously, the Board will not be adopting for First Notice the proposed amendments to Part 106. The Board, as noted previously, finds that the proposed amendments do not sufficiently state a review standard for certain appeals and states an arbitrary and capricious standard for review of ERG proposals which the courts have rejected. Therefore, the Board will use the procedures of 35 Ill. Adm. Code 105 and Section 40 of the Act until the Board's proposed procedural rules are adopted. As noted previously, the Board's proposed procedural provides a process to appeal final Agency determinations which are not part of permitting. As a result, references to the proposed Part 106 sections will be replaced with references to Part 105. The Board intends to decide these matters expeditiously in order to keep within the time-frames of the ERMS program.

CONCLUSION

Section 27 of the Act requires the Board to consider the economic reasonableness and the technical feasibility of the proposed regulations. The IEPA provided extensive information concerning these issues in its Technical Support Document from pages 79-147 and in the testimony of its witnesses. Additionally, Section 9.8(c)(1) of the Act requires the IEPA to demonstrate that the ERMS program is at least economically reasonable as a traditional command and control program. The Board finds that the proposed rule is economically reasonable and technically feasible as required by Section 27 of the Act based on this record. However, the Board makes no decision whether the IEPA has satisfactorily demonstrated that the proposed ERMS program meets the requirements of Section 9.8 of the Act. Nevertheless the Board will proceed to first notice. The Board notes, however, that based on the

information requested by the Board from the IEPA concerning the requirements of Section 9.8(c)(3) of the Act, the Board may need to include a provision that assures that sources subject to the program will not be required to reduce emissions to an extent that exceeds their proportionate share of the total emission reductions required of all emission sources, including mobile and area sources, to attain and maintain the NAAQS for ozone in the Chicago nonattainment area. The Board adopts the proposal as amended for first notice.

ORDER

The Board directs the Clerk to cause the filing of the following with the Secretary of State for First Notice publication in the *Illinois Register*:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER b: ALTERNATIVE REDUCTION PROGRAM

PART 205
EMISSIONS REDUCTION MARKET SYSTEM

SUBPART A: GENERAL PROVISIONS

Section
205.100 Severability
205.110 Purpose
205.120 Abbreviations and Acronyms
205.130 Definitions
205.150 Emissions Management Periods

SUBPART B: APPLICABILITY

Section
205.200 Participating Source
205.205 Exempt Source
205.210 New Participating Source
205.220 Insignificant Emissions Units or Activities
205.225 Startup, Malfunction or Breakdown

SUBPART C: OPERATIONAL IMPLEMENTATION

Section
205.300 Seasonal Emissions Component of the Annual Emissions Report
205.310 ERMS Applications
205.315 CAAPP Permits for ERMS Sources
205.318 Certification for Exempt CAAPP Sources
205.320 Baseline Emissions
205.330 Emissions Determination Methods
205.335 Sampling, Testing, Monitoring and Recordkeeping Practices
205.337 Changes in Emissions Determination Methods and Sampling, Testing, Monitoring and Recordkeeping Practices

SUBPART D: SEASONAL EMISSIONS MANAGEMENT

Section
205.400 Seasonal Emissions Allotment
205.405 Exclusions from Further Reductions
205.410 Participating Source Shutdowns

SUBPART E: ALTERNATIVE ATU GENERATION

Section
205.500 Emissions Reduction Generator
205.510 Inter-Sector Transaction

SUBPART F: MARKET TRANSACTIONS

Section
205.600 ERMS Database
205.610 Application for Transaction Account
205.620 Account Officer
205.630 ATU Transaction Procedures

SUBPART G: PERFORMANCE ACCOUNTABILITY

Section
205.700 Compliance Accounting
205.710 Alternative Compliance Market Account (ACMA)
205.720 Emissions Excursion Compensation
205.730 Excursion Reporting
205.740 Enforcement Authority
205.750 Emergency Conditions
205.760 Market System Review Procedures

AUTHORITY: Implementing Section 9.8 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/9.8, 27 and 28].

SOURCE: Adopted at 21 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 205.100 Severability

If any Section, subsection, sentence or clause of this Part is judged invalid, such adjudication shall not affect the validity of this Part as a whole or of any Section, subsection, sentence or clause thereof not judged invalid.

Section 205.110 Purpose

The purpose of this Part is to implement the Emissions Reduction Market System (ERMS) regulatory program consistent with the assurances that are specified in Section 9.8 of the Environmental Protection Act [415 ILCS 5/9.8]. The ERMS is designed, as further specified in this Part, to achieve the following:

a) Implement innovative and cost-effective strategies to attain the national ambient air quality standard (NAAQS) for ozone and to meet the requirements of the Clean Air Act;

b) Increase flexibility for participating sources and lessen the economic impacts associated with implementation of the Clean Air Act;

c) Take into account the findings of the national ozone transport assessment being coordinated by the Environmental Council of States with participation by the United States Environmental Protection Agency and by the Lake Michigan Air Directors Consortium; and

d) Assure that stationary sources will not be required to reduce emissions to an extent that exceeds their proportionate share of the total emissions reductions required of all sectors, including mobile and area sources.

Section 205.120 Abbreviations and Acronyms

Unless otherwise specified within this Part, the abbreviations used in this Part shall be the same as those found in 35 Ill. Adm. Code 211. The following abbreviations and acronyms are used in this Part:

ACMA	Alternative Compliance Market Account
Act	Environmental Protection Act [415 ILCS 5/1 et seq.]
ATU	Allotment Trading Unit
CAA	Clean Air Act as amended in 1990 [42 U.S.C. 7401 et seq.]
CAAPP	Clean Air Act Permit Program
ERMS	Emissions Reduction Market System
LAER	Lowest Achievable Emission Rate
MACT	Maximum Achievable Control Technology
NAAQS	National Ambient Air Quality Standard
NESHAP	National Emission Standards for Hazardous Air Pollutants
RFP	Reasonable Further Progress
ROP	Rate of Progress
VOM	Volatile Organic Material

Section 205.130 Definitions

Unless otherwise specified within this Part, the definitions for the terms used in this Part shall be the same as those found in Section 39.5 of the Act and in 35 Ill. Adm. Code 211.

"Account officer" means a natural person who has been approved by the Agency, as specified in Section 205.520, and is subsequently responsible for one or more Transaction Accounts to which he or she is designated.

"Allotment" means the number of allotment trading units (ATUs) allotted to a source by the Agency, as established in the source's CAAPP permit.

"Allotment Trading Unit (ATU)" means a tradable unit that represents 200 lbs of VOM emissions and is a limited authorization to emit 200 lbs of VOM emissions during the seasonal allotment period.

"Annual Emissions Report" means the report submitted to the Agency annually pursuant to 35 Ill. Adm. Code 254.

"Baseline emissions" means a participating source's VOM emissions for the seasonal allotment period based on historical operations, adjusted so that credit is allowed for voluntary VOM emissions reductions beyond reductions required by applicable requirements effective in 1996, as specified in Section 205.320 of this Part. Baseline emissions shall be the basis of the allotment for each participating source.

"Best available technology" or "BAT" means an emission level based on the maximum degree of reduction of VOM emitted from or which results from any emission unit, which the Agency, on a case-by-case basis, taking into account energy, environmental and economic impacts, determines is achievable for such unit through application of production processes and available methods, systems, and technique for control of VOM, considering the features and production process and control methods, systems and techniques already used for the unit. In no event shall application of "best available technology" result in emissions of VOM which exceed the emissions allowed by any standard established pursuant to Section 111 of the Clean Air Act, if such a standard is applicable to the category of emission unit.

"CAAPP" means the Clean Air Act Permit Program, pursuant to Section 39.5 of the Act. [415 ILCS 5/39.5(1996)]

"Chicago ozone nonattainment area" means the area composed of Cook, DuPage, Kane, Lake, McHenry, and Will Counties and Aux Sable Township and Goose Lake Township in Grundy County and Oswego Township in Kendall County.

"Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, such as an act of God, that requires immediate corrective action to restore normal operation.

"Emissions excursion" refers to the event that occurs when a participating source or new participating source does not hold sufficient ATUs at the end of a reconciliation period to account for its VOM emissions from the preceding seasonal allotment period, in accordance with Section 205.150(c) or (d) of this Subpart.

"Excursion Compensation Notice" means an administrative notice issued by the Agency, pursuant to Section 205.620 of this Part, that notifies the owner or operator of a participating source or new participating source that the Agency has determined that the source has had an emissions excursion.

"General participant" means any person, other than a participating source or new participating source, that obtains a Transaction Account and is allowed to buy and sell ATUs.

"New participating source" means a source not operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that is required to obtain a CAAPP permit and has or will have seasonal emissions of at least 10 tons of VOM.

"Participating source" means a source operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that is required to obtain a CAAPP permit and has baseline emissions of at least 10 tons, as specified in Section 205.320(a) of this Part or seasonal emissions of at least 10 tons in any seasonal allotment period beginning in 1999.

"Reconciliation period" means the period from October 1 through December 31 during which the owner or operator of a participating source or new participating source must compile actual VOM emissions for the previous seasonal allotment period and may also buy or sell ATUs so that sufficient ATUs are held by the source by the conclusion of the reconciliation period.

"Seasonal allotment period" means the period from May 1 through September 30 of each year.

"Seasonal emissions" means actual VOM emissions at a source that occur during a seasonal allotment period.

"Sell" means to transfer ATUs to another person through sale, lease, trade or other means of transfer.

"Special participant" means any person that registers with the Agency and is allowed to purchase and retire ATUs but not sell ATUs, as specified in Section 205.510 of this Part.

"Throughput" means the activity of an emission unit during a particular period relevant to its generation of VOM emissions, including, but not limited to, the amount of material transferred for a liquid storage operation, the amount of material processed through or produced by the emission unit, fuel usage, or the weight or volume of coatings or inks.

"Transaction Account" means an account authorized by the Agency or its designee that allows an account officer to buy or sell ATUs.

Section 205.150 Emissions Management Periods

a) The VOM emissions control period is the seasonal allotment period, which is from May 1 through September 30, annually.

b) The reconciliation period is from October 1 to December 31, annually. During each reconciliation period, participating sources and new participating sources shall:

1) Compile data of actual VOM emissions during the immediately preceding seasonal allotment period; and

2) Submit its seasonal emissions component of its Annual Emissions Report, in accordance with Section 205.300 of this Part.

c) At the end of each reconciliation period on and after the dates specified in Section 205.200 of this Part, each participating source shall:

1) Hold ATUs in an amount not less than its VOM emissions during the preceding seasonal allotment period, except as provided in Sections 205.220, 205.225, 205.320(e)(3) or (4) and 205.650 of this Part; or

2) Hold ATUs in an amount not less than 1.3 times its seasonal emissions attributable to a major modification during the preceding seasonal allotment period, if a participating source commences operation of a major modification pursuant to 35 Ill. Adm. Code 203 after May 1, 1999. Additionally such source must hold ATUs in accordance with subsection (c)(1) of this Section for VOM emissions not attributable to this major modification during the preceding seasonal allotment period.

d) At the end of each reconciliation period on and after the date on which the source commences operation, as specified in Section 205.210 of this Part, each new participating source shall:

1) If the new participating source is a new major source pursuant to 35 Ill. Adm. Code 203, hold ATUs in an amount not less than 1.3 times its VOM emissions during the preceding seasonal allotment period; or

2) If the new participating source is not a new major source pursuant to 35 Ill. Adm. 203, hold ATUs in an amount not less than its VOM emissions during the preceding seasonal allotment period, except as provided in Section 205.650 of this Part.

e) Any participating source that commences operation of a major modification after May 1, 1999, or any new participating source that is a new major source, which, at the end of each reconciliation period, holds ATUs in an amount not less than 1.3 times the VOM emissions emitted by such new or attributable to this modified unit during the preceding seasonal allotment period shall be deemed to have satisfied the offset requirements of 35 Ill. Adm. Code 203.302(a), 203.602 and 203.701.

SUBPART B: APPLICABILITY

Section 205.200 Participating Source

The requirements of this Part shall apply to any source operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that is required to obtain a CAAPP permit and has baseline emissions of at least 10 tons, as specified in Section 205.320(a) of this Part or seasonal emissions of at least 10 tons in any seasonal allotment period beginning in 1999. Each participating source shall hold ATUs, as specified in Section 205.150(c) of this Part, in accordance with the following schedule:

a) For any participating source that has baseline emissions of at least 10 tons of VOM, as determined in accordance with Section 205.320(a) of this Part, beginning with the 1999 seasonal allotment period;

b) For any source that first becomes a participating source because its VOM emissions increase to 10 tons per season or more in any seasonal allotment period beginning with 1999 and this emissions increase is not a major modification pursuant to 35 Ill. Adm. Code 203, beginning with the first seasonal allotment period after such increased emissions occurred; or

c) For any source that will first be subject to the requirements of this Part because of a VOM emissions increase at any time after May 1, 1999 that constitutes a major modification pursuant to 35 Ill. Adm. Code 203, upon commencing operation of this modification.

Section 205.205 Exempt Source

a) Any source that otherwise meets the criteria for participating sources shall be exempt from the requirements of this Part if the source accepts a 15 tons per seasonal allotment period limit on its VOM emissions in its CAAPP permit for each seasonal allotment period in which the source would be required to participate in the ERMS in accordance with the following:

1) If the source would be required to participate in the ERMS beginning with the 1999 seasonal allotment period in accordance with Section 205.200(a) of this Subpart, such source shall apply for the applicable permit limitation by January 1, 1998; or

2) If the source is required to participate in the ERMS in any seasonal allotment period after 1999 because its VOM emissions increase to 10 tons or more in any seasonal allotment period beginning with 1999 in accordance with Section 205.200(b) of this Subpart, such source shall apply for the applicable permit limitation by December 1 of the first year in which its seasonal emissions are at least 10 tons.

b) Any source that otherwise meets the criteria for participating sources shall be exempt from the requirements of this Part, except that any such source shall be required to submit the seasonal emissions component of the Annual Emissions Report and an ERMS application as specified in Sections 205.300 and 205.310(d) of this Part, respectively, if such source decides to reduce its seasonal emissions by at least 18 percent beginning in 1999. Any such source shall accept conditions in its CAAPP permit limiting its seasonal emissions to at least 18 percent less than its baseline emissions, as determined in accordance with Section 205.320 of this Part. Any such source shall apply for the applicable permit limitation(s) by January 1, 1998. ATUs equivalent to any amount of VOM emissions reductions achieved by the source beyond 12 percent (at least six percent) shall be issued by the Agency to the ACMA.

Section 205.210 New Participating Source

The requirements of this Part shall apply to any new participating source, a source not operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that is required to obtain a CAAPP permit and has or will have seasonal emissions of at least 10 tons of VOM. Each new participating source shall hold ATUs, as specified in Section 205.150(d) of this Part, upon commencing operation.

Section 205.220 Insignificant Emissions Units or Activities

Emission units or activities identified as insignificant activities pursuant to the CAAPP permit for each participating source are exempt from the requirements of this Part.

Section 205.225 Startup, Malfunction or Breakdown

Participating sources permitted to operate during startup, malfunction or breakdown pursuant to 35 Ill. Adm. Code 201.262, 270.407 and 270.408 are not required to hold ATUs for excess VOM emission during startup, malfunction and breakdown as authorized in the source's permit.

SUBPART C: OPERATIONAL IMPLEMENTATION

Section 205.300 Seasonal Emissions Component of the Annual Emissions Report

a) For each year in which the source is operational, the owner or operator of each participating source and new participating source shall submit, as a component of its Annual Emissions Report, seasonal emissions information to the Agency for each seasonal allotment period after the effective date of this Part in accordance with the following schedule:

1) For each participating source or new participating source that generates VOM emissions from less than 10 emission units, by October 31 of each year; and

2) For each participating source or new participating source that generates VOM emissions from 10 or more emission units or activities, by November 30 of each year.

b) In addition to any information required pursuant to 35 Ill. Adm. Code 254, the seasonal emissions component of the Annual Emissions Report shall contain the following information for the preceding seasonal allotment period for each emission unit emitting or capable of emitting VOM, except that such information is not required for emission units or activities excluded pursuant to Section 205.220 of this Part or for VOM emissions attributable to startup, malfunction or breakdown, as specified in Section 205.225 of this Part:

1) Actual seasonal emissions of VOM from the source;

2) A description of the methods and practices used to determine VOM emissions, as required by the source's CAAPP permit, including any supporting documentation and calculations;

3) A detailed description of any monitoring methods that differ from the methods specified in the CAAPP permit for the source, as provided in Section 205.337 of this Subpart;

4) If a source has experienced an emergency, as provided in Section 205.650 of this Part, it shall reference the associated emergency conditions report that has been approved by the Agency;

5) If a source's baseline emissions have been adjusted because of a variance, consent order or CAAPP permit compliance schedule, as provided for in Section 205.320(e)(3) of this Part, it shall provide documentation quantifying the adjusted VOM emissions amount; and

6) If a source is operating a new or modified emission unit for which three years of operational data is not yet available, as specified in Section 205.320(f) of this Subpart, it shall specify seasonal emissions attributable to the new emission unit or the modification of the emission unit.

Section 205.310 ERMS Applications

a) The owner or operator of each participating source or new participating source shall submit to the Agency an ERMS application in accordance with the following schedule:

1) For a participating source with baseline emissions of at least 10 tons of VOM, as determined in accordance with Section 205.320(a) of this Subpart, by January 1, 1998;

2) For any source that first becomes a participating source because its VOM emissions increase to 10 tons or greater during any seasonal allotment period beginning with 1999, on or before December 1 of the year of the first seasonal allotment period in which its VOM emissions are at least 10 tons, provided that this emissions increase is not a major modification pursuant to 35 Ill. Adm. Code 203; or

3) For a new participating source or for a major modification of any source existing prior to May 1, 1999, that is subject to 35 Ill. Adm. Code 203 based on VOM emissions, at the time a construction permit application is submitted or due for the source or modification, whichever occurs first.

b) Except as provided in subsection (d) of this Section, each ERMS application for participating sources shall contain all information required by the Agency pursuant to Section 39.5 of the Act or reference such information if previously submitted to the Agency, including the following information:

1) Data sufficient to establish the appropriate baseline emissions for the source in accordance with Section 205.320 of this Subpart, including but not limited to the following:

A) VOM emissions data and production types and levels from the baseline emissions year(s), as specified in Section 205.320(a)(1), (b) or (c) of this Subpart, as appropriate;

B) If the source is proposing a substitute baseline emissions year(s), as provided in Section 205.320(a)(2) of this Subpart, a justification that the year is more representative than 1994, 1995 or 1996, including data on production types and levels from the proposed substitute year(s) and historical production data, as needed to justify that the proposed substitute year(s) is representative; and

C) If the source is proposing a baseline emissions adjustment based on voluntary over-compliance, as provided in Section 205.320(d) of this Subpart, sufficient information for the Agency to determine the appropriate adjustment;

2) A description of methods and practices used to determine baseline emissions and that will be used to determine seasonal emissions for purposes of demonstrating compliance with this Part, in accordance with Sections 205.330 and 205.335 of this Subpart;

3) Identification of any emission unit for which exclusion from further reductions is sought pursuant to Section 205.405(b) of this Part and including all of the information required pursuant to Section 205.405(b) of this Part;

4) Identification of any emission unit excluded from further reductions pursuant to Section 205.405(a) of this Part; and

5) Identification of any new or modified emission unit for which a construction permit was issued prior to January 1, 1998, but for which three years of operational data is not available, and the permitted VOM emissions or the permitted increase in VOM emissions from such emission unit(s), adjusted for the seasonal allotment period.

c) Except as provided in subsection (h) of this Section, the ERMS application submitted by each participating source shall also be an application for a significant modification of its CAAPP permit or a revision to its CAAPP application if a CAAPP permit has not yet been issued for the source.

d) The ERMS application for any source that elects to reduce its seasonal emissions by at least 18 percent from its baseline emissions, as provided in Section 205.205(b) of this Part, shall include:

1) VOM emissions data sufficient to establish the appropriate baseline emissions for the source in accordance with Section 205.320 of this Subpart; and

2) A description of methods and practices used to determine baseline emissions and that will be used to demonstrate that its seasonal emissions will be at least 18 percent less than its baseline emissions, in accordance with Sections 205.330 and 205.335 of this Subpart.

e) Within 120 days of receipt of an ERMS application, the Agency shall provide written notification to the source of a preliminary baseline emissions determination. Public notice of a draft CAAPP permit in accordance with Section 39.5(8) of the Act shall fulfill this requirement for a preliminary baseline emissions determination if issued within 120 days. [415 ILCS 5/39.5(8) (1996).]

f) The ERMS application for each source applying for a major modification, as provided in subsection (a)(3) of this Section, shall include the information specified in subsection (b) of this Section and a certification by the owner or operator recognizing that the source will be required to hold ATUs by the end of each reconciliation period in accordance with Section 205.150(c)(2) of this Part, and provide a plan explaining the means by which it will obtain ATUs for the VOM emissions attributable to the major modification for the first three seasonal allotment periods in which this major modification is operational.

g) The ERMS application for each new participating source shall include:

1) A description of methods and practices that will be used to determine seasonal emissions for purposes of demonstrating compliance with this Part, in accordance with Section 205.330 and 205.335 of this Subpart;

2) A certification by the owner or operator recognizing that the source will be required to hold ATUs by the end of each reconciliation period in accordance with Section 205.150(d) of this Part for each seasonal allotment period in which it is operational; and

3) If the source is a new major source subject to 35 Ill. Adm. Code 203, a plan explaining means by which it will obtain such ATUs for the first three seasonal allotment periods in which it is operational.

h) The owner or operator of any participating source that has identified a new or modified emission unit as specified in subsection (b)(5) of this Section, shall submit a written request, or an application for, a revised emissions baseline and allotment. Such written request or application shall be submitted by December 1 of the year of the third complete seasonal allotment period in which such

newly constructed emission unit is operational, which submittal shall include information on the seasonal emissions for these first three seasonal allotment periods.

Section 205.315 CAAPP Permits for ERMS Sources

a) The Agency shall determine the baseline emissions for each participating source in accordance with Section 205.320 of this Subpart, through its final permit action on a new or modified CAAPP permit for each such source. The Agency's baseline emissions determination may be appealed in accordance with the CAAPP appeal procedures specified in Section 40.2 of the Act. [415 ILCS 5/40.2 (1996).] If the permit conditions establishing a source's baseline emissions is appealed, the baseline emissions for the source shall be as proposed in the source's ERMS application during the pendency of the appeal. During the pendency of the appeal, ATUs shall be allotted to the source pursuant to this baseline emissions amount, reduced in accordance with Section 205.400(c) of this Part, but such source shall not be allowed to sell or use the portion of the ATUs that are attributed to the part of the source's proposed baseline emissions that were denied by the Agency and are under review by the Board to meet its seasonal emissions. The allotted ATUs that are under review will expire two years after the date of the final decision which allows the source to use or sell the ATUs under appeal, instead of two years after the issuance as set forth at Section 205.400(b).

b) The Agency shall determine, in accordance with Sections 205.330 and 205.335 of this Subpart, the methods and practices applicable to each participating source and new participating source to determine seasonal emissions through its final permit action on a new or modified CAAPP permit for each such source. The Agency's determination of the methods and practices applicable may be appealed in accordance with the CAAPP appeal procedures specified in Section 40.2 of the Act.

c) The Agency shall determine, in accordance with Section 205.405(b) of this Part, if an emission unit qualifies for exclusion from further reductions in its final permit action on a new or modified CAAPP permit for each such source. The Agency's determination may be appealed in accordance with the CAAPP appeal procedures specified in Section 40.2 of the Act. If the permit conditions establishing the Agency's best available technology determination is appealed, ATUs shall be allotted to the source for any emission unit for which the Agency's best available technology (BAT) determination is being appealed without the emissions reduction otherwise required by Section 205.400(c) of this Part during the pendency of the appeal. The source however cannot sell or use the portion of the ATUs to meet its seasonal emissions that are attributed to the emission unit(s) that the source proposed as meeting BAT but were not accepted by the Agency as meeting BAT and are under review by the Board. The

allotted ATUs that are under review will expire two years after the date of the final decision that determines that those emission units are using BAT instead of two years after the issuance as set forth at Section 205.400(b).

d) The allotment for each participating source for each seasonal allotment period shall be specified in its CAAPP permit.

e) To the extent possible, the Agency shall initiate the procedures of 35 Ill. Adm. Code 252, as required by Section 39.5 of the Act, by grouping the draft CAAPP permits and supporting documents for participating sources. Specifically, to the extent possible, the Agency shall issue a joint public notice and hold a joint hearing, as appropriate, addressing participating sources for which a hearing is requested.

f) A permit for a participating source may be transferred from the current Permittee to another person in accordance with the following:

1) In the case of a name change of the participating source where ownership is not altered, appropriate documentation shall be submitted to revise the Transaction Account to reflect the name change; or

2) In the case of an ownership change of the participating source, the allotment shall also be transferred by the owner or operator of the permitted source to the new owner or operator, or the new owner or operator shall submit a statement to the Agency certifying that such transfer is not occurring and demonstrating that necessary ATUs are or will be available by other means for the intended operation of the source.

g) Upon reopening or renewal of the CAAPP permit for any participating source or new participating source, any multiple season transfer agreement, as provided in Section 205.630(a)(2)(B) of this Part, that has three or more years of transfers remaining shall be identified in the renewed or reissued CAAPP permit for each such source.

h) Upon reopening or renewal of the CAAPP permit for any participating source or new participating source, any ATUs that will be issued by the Agency for three years or more to any such source pursuant to Sections 205.410, 205.500 or 205.510 of this Part shall be identified in the renewed or reissued CAAPP permit for each such source.

Section 205.318 Certification for Exempt CAAPP Sources

The owner or operator of any source that is located in the Chicago ozone nonattainment area that is required to obtain a CAAPP permit, and has seasonal emissions, as determined in accordance with Section 205.320(a) of this Subpart, of less than 10 tons shall submit a written

certification to the Agency by January 1, 1998, certifying that its VOM emissions are below 10 tons per season as specified in Section 205.320(a) of this Subpart. Such certification shall include the amount of VOM emissions at the source during the 1994, 1995, 1996 and 1997 seasonal allotment periods, and supporting calculations.

Section 205.320 Baseline Emissions

a) Except as provided in subsections (b) or (c) of this Section, baseline emissions shall be determined by the Agency in accordance with the following, adjusted as specified in subsections (d), (e) and (f) of this Section:

1) Baseline emissions shall be calculated using the average of the two seasonal allotment periods with the highest VOM emissions during 1994, 1995, or 1996.

2) Any source may substitute seasonal emissions on a year-for-year basis due to non-representative conditions in 1994, 1995, or 1996, but must stay within the period from 1990 through 1997, and must have accurate seasonal emissions data for the substitute year(s).

b) For any source that has seasonal emissions of less than 10 tons, as determined in accordance with subsection (a) of this Section, but becomes a participating source because its seasonal emissions increase to 10 tons or more in any seasonal allotment period beginning with 1999, baseline emissions shall be determined by the Agency based on actual VOM emissions from the first seasonal allotment period in which the sources emissions exceeded 10 tons, adjusted as specified in subsections (d), (e) and (f) of this Section, provided such emissions increase is not a major modification pursuant to 35 Ill. Adm. Code 203.

c) For any source that has seasonal emissions of less than 10 tons, as determined in accordance with subsection (a) of this Section, but becomes a participating source because its seasonal emissions increase to 10 tons or more in any seasonal allotment period beginning with 1999 and this emissions increase constitutes a major modification pursuant to 35 Ill. Adm. Code 203, baseline emissions shall be determined by the Agency based on the average of the actual seasonal emissions from the two seasonal periods prior to a timely submittal of its application for the major modification, adjusted as specified in subsections (d) and (e) of this Section. Any such source may substitute seasonal emissions on a year-for-year basis due to non-representative conditions in either of the two seasonal allotment periods prior to submittal of its application for the major modification but must stay within the five year period prior to submittal of such application.

d) The baseline emissions of any participating source shall be increased for voluntary over-compliance that occurred after September 30, 1990 and results in a VOM emissions level that is lower than the level required by applicable requirements effective in 1996, including limitations in the source's permit(s) based on such applicable requirements. Voluntary over-compliance shall be determined in accordance with the following:

1) Determine the actual activity or production types and levels from the seasonal allotment period(s) selected for baseline emissions pursuant to subsection (a), (b) or (c) of this Section;

2) Determine seasonal emissions for each emission unit or process as the product of the amount of activity or production, as determined in accordance with subsection (d)(1) of this Section, and the actual emissions level;

3) Determine seasonal emissions for each emission unit or process as the product of the amount of activity or production, as determined in accordance with subsection (d)(1) of this Section, and the allowable emissions level pursuant to all applicable requirements effective through 1996, including limitations in the source's permit(s) based on such applicable requirements; and

4) Determine the appropriate adjustment to baseline emissions by subtracting the seasonal emissions determined pursuant to subsection (d)(2) of this Section from the seasonal emissions determined pursuant to subsection (d)(3) of this Section.

e) The baseline emissions of any participating source shall be decreased if any of the following circumstances exist:

1) If a source is out of compliance with any applicable requirements, including limitations in the source's permit(s) based on such applicable requirements, in any of the seasonal allotment periods used for baseline emissions, its baseline emissions shall be lowered to reflect the amount of VOM emissions that would be achieved if in compliance with such requirements.

2) If any of the seasonal allotment periods selected for baseline emissions do not reflect compliance with requirements effective through 1996 that became applicable after any of the years selected as baseline years, the source's baseline emissions shall be lowered to reflect the amount of VOM emissions that would be achieved if in compliance with such requirements.

3) If, in any of the years selected for baseline emissions, a source's VOM emissions are in excess of the amount of VOM emissions allowed by applicable rules because it has been granted a variance, has entered into a consent order, or is operating pursuant to a CAAPP permit compliance schedule, the baseline emissions for such source shall be lowered to reflect the VOM emissions amount that would be achieved if in compliance with such requirements, subject to the following:

A) Each such source shall be allowed to emit VOM emissions in excess of the ATUs it holds at the end of the reconciliation period each year until compliance with the applicable regulation is achieved, or upon expiration of the relief allowed for in the variance, consent order or CAAPP permit compliance schedule, whichever occurs first;

B) Such excess VOM emissions shall be allowed to the extent that the amount of actual VOM emissions for the seasonal allotment period are in an amount not greater than the difference between the source's actual emissions, to the extent allowed in the variance, consent order or CAAPP permit compliance schedule, and the amount of VOM emissions that would be emitted if in full compliance; and

C) The seasonal component of the Annual Emissions Report for each such source shall be adjusted each year until compliance with the applicable requirement(s) is achieved, or upon expiration of the relief allowed for in the variance, consent order or CAAPP permit compliance schedule, whichever occurs first, as specified in subsection (e)(3)(B) of this Section.

4) For any participating source that operated with excess emissions during startup, malfunction or breakdown during any year used to determine its baseline emissions, whether or not such operation was authorized pursuant to the source's permit, excess VOM emissions attributable to startup, malfunction or breakdown shall be excluded from the baseline emissions.

f) For new or modified emission units at a source for which a construction permit was issued prior to January 1, 1998, but for which three years of operational data is not available, the baseline emissions determination for the source shall include VOM emissions from such new emission unit or the increase in emissions from the modification of such emission unit based on the two seasonal allotment periods with the highest VOM emissions from the first three complete seasonal allotment periods in which any such new or modified emission unit is operational. ATUs shall only be issued in accordance with this subsection after

the baseline emissions has been determined. Any such source shall not be required to hold ATUs for VOM emissions attributable to the new emission unit or the modification of the existing emission unit for the first three complete seasonal allotment periods in which it is operational.

g) For any source which acquired emission reduction credits pursuant to a written agreement, entered into prior to January 1, 1998 and such emission reduction credits were acquired for use as emissions offsets, in accordance with 35 Ill. Adm. Code 203, such emission reduction credits, adjusted for the seasonal allotment period, and reduced by 24 percent, shall be included in the baseline emissions determination for the source, only to the extent that:

1) The Agency has issued a federally enforceable permit, prior to January 1, 1998, to the source from which the emission reduction credits were acquired, and such federally enforceable permit recognized the creation of the VOM emission reduction credits by the cessation of all VOM-emitting activities and the withdrawal of the operating permits for VOM-emitting activities at such other sources; and

2) The Agency has not relied upon the emission reduction credits for attainment demonstration purposes.

Section 205.330 Emissions Determination Methods

The owner or operator of a participating source or new participating source shall determine VOM emissions from the source during the seasonal allotment period using methods as necessary to demonstrate compliance with this Part. Such methods shall be, at a minimum, as stringent as those required by any applicable requirement and any permit condition. The Agency shall establish the emissions determination methods applicable to each such source in the source's CAAPP permit. The following methods, in conjunction with relevant source-specific throughput and operating data, are acceptable methods a source may use to determine seasonal emissions, depending on the type of emission unit:

a) Material balance calculation, based on the VOM content of raw materials and recovered materials, as is typically used for degreasers, coating lines, and printing lines equipped with a carbon adsorption system (recovery-type control device) or without any control device;

b) A standard engineering formula for estimation of emissions, as is typically used for storage and transfer of volatile organic liquids;

c) A source-specific emission factor(s), based on representative testing and sampling data and appropriate analysis, as typically used for petroleum refining processes;

d) A published USEPA emission factor(s), as is typically used for component leaks;

e) A source-specific emission rate or VOM control efficiency, based on representative testing, as is typically used for chemical processes and afterburners (destruction-type control device), respectively;

f) A method not listed above that is sufficient to demonstrate compliance with this Section; or

g) An appropriate combination of the above methods, as typically used for a coating or printing line equipped with a control device, where the available emissions are determined by material balance and the control efficiency is determined by representative testing.

Section 205.335 Sampling, Testing, Monitoring and Recordkeeping Practices

The owner or operator of a participating source or new participating source shall conduct sampling, perform testing, conduct monitoring and maintain records as needed to support its method for determining seasonal emissions in accordance with Section 205.330 of this Subpart and to demonstrate compliance with this Part. Such sampling, testing, monitoring and recordkeeping shall be, at a minimum, as stringent as that required by any applicable requirement and any permit condition. The Agency shall establish the practices applicable to each such source in the source's CAAPP permit.

Section 205.337 Changes in Emission Determination Methods and Sampling, Testing, Monitoring and Recordkeeping Practices

a) The methods used for determining seasonal emissions from a source shall generally be consistent with the methods used to determine its baseline emissions unless the source's permit accommodates the use of alternate methods to determine VOM emissions.

b) Modification of Methods and Practices

1) If a source proposes new or revised methods to determine VOM emissions or new or revised supporting practices for sampling, testing, monitoring or recordkeeping that differ significantly from the methods and practices specified by its current permit, the source shall obtain a revised permit in accordance with the procedures specified in Section 39.5 of the Act, prior to relying on such methods and practices.

2) The Agency shall issue a revised permit if it finds, based upon submission of an appropriate permit application, that the proposed methods or practices are needed or appropriate to address changes in the

operation of the source or emission units that were not considered when the current permit was issued, that the proposed methods and procedures will not significantly affect the determination of actual seasonal emissions, or that the proposed methods and procedures incorporate new or improved analytical techniques or estimation methods that will increase the accuracy with which actual seasonal emissions are determined, and other applicable requirements for issuance of a revised permit are met.

3) If the Agency approves the use of a modified method or practice, the Agency is authorized to determine a corrected baseline and thereafter issue ATUs pursuant to this corrected baseline.

SUBPART D: SEASONAL EMISSIONS MANAGEMENT

Section 205.400 Seasonal Emissions Allotment

a) Each participating source shall receive an allotment which shall be issued by the Agency and distributed in ATUs.

b) Except for ATUs issued pursuant to Sections 205.315(a) and (c), 205.500 and 205.510, ATUs issued for any seasonal allotment period are valid for use during the seasonal allotment period following issuance and the next succeeding seasonal allotment period. All ATUs shall be valid until such ATUs expire or are retired.

c) The initial allotment for each participating source shall be based on the baseline emissions for such source, as determined in accordance with Section 205.320 of this Part, and shall be reduced by 12 percent in 1999 or in such other year that a source is issued its initial allotment, except as provided in Section 205.405 of this Subpart.

d) Except as provided in Section 205.337(b)(3) of this Part and subsections (c) and (e) of this Section, allotments shall remain at 1999 or initial levels unless the Agency makes a demonstration to the Board that further reductions are needed in accordance with the rulemaking provisions of Sections 9.8, 27 and 28 of the Act.

e) If the baseline emissions for any participating source is revised in accordance with Section 205.320(f) of this Part, the allotment shall be increased by the modified portion of the baseline emissions amount, reduced by 12 percent, except as provided in Section 205.405 of this Part.

f) Except as provided in subsection (h) of this Section, any new participating source shall not be issued ATUs by the Agency, but shall be required to hold ATUs at the end of the reconciliation period as specified in Section 205.150(d) of this Part for each seasonal allotment period in which it is operational.

g) Any source existing as of May 1, 1999, which first becomes subject to the requirements of this Part because its seasonal emissions increase to more than 10 tons as a result of a major modification pursuant to 35 Ill. Adm. Code 203, in any seasonal allotment period beginning with 1999, shall not be allotted ATUs by the Agency for the VOM emissions attributable to this modification, except as provided in subsection (h) of this Section, but shall be allotted ATUs by the Agency based on its baseline emissions, as determined in accordance with Section 205.320 of this Part. Any such participating source shall be required to hold ATUs at the end of the reconciliation period as specified in Section 205.150(c) of this Part, for each seasonal allotment period in which it is subject to this Part.

h) If a participating source or new participating source submits an ATU transfer agreement authorizing the transfer of ATUs for more than one year, as provided in Section 205.630(a)(2)(B) of this Part, the ATUs shall be automatically transferred by the Agency from the transferor's Transaction Account to the transferee's Transaction Account. Upon reopening or renewal of the CAAPP permit for any such source, any multiple season transfer agreement that has three or more years of transfers remaining shall be identified in the renewed or reissued CAAPP permit for each such source.

Section 205.405 Exclusions from Further Reductions

a) VOM emissions from the following emission units or activities shall be excluded from the VOM emissions reductions requirement specified in Section 205.400(c) and (e) of this Subpart:

1) Emission units or activities that comply with any NESHAP or MACT standard promulgated pursuant to the CAA;

2) Direct combustion emission units designed and used for comfort heating purposes, fuel combustion emission units and internal combustion engines; and

3) An emission unit for which a LAER demonstration has been approved by the Agency on or after November 15, 1990.

b) When it is determined that an emission unit in operation prior to 1999 is using the best available technology for controlling VOM emissions, VOM emissions from such emission units shall not be subject to the VOM emissions reductions

requirement specified in Section 205.400(c) or (e) of this Subpart. The owner or operator of a source may request such exclusion from further reductions by providing the following information, in addition to the information required in Section 205.310 of this Part, in its ERMS application:

1) Identification of each emission unit for which exclusion is requested, including the year of initial operation of such emission unit;

2) Identification of all requirements applicable to the emission unit;

3) A demonstration that the emission unit is using the best available technology for controlling VOM emissions;

4) Identification of the permitted VOM emissions from the emission unit;

5) VOM emissions from the emission unit for each seasonal allotment period used in the baseline emissions determination for the source; and

6) A description and quantification of any reductions in VOM emissions that were achieved at the emission unit or source based on its use of the best available technology.

c) As part of its review of an ERMS application or application for a modified allotment, the Agency may determine that any such emission unit qualifies for exclusion from further reductions. The Agency shall make its proposed determination in a draft CAAPP permit subject to public notice and participation, accompanied by an explanation of its proposed action.

Section 205.410 Participating Source Shutdowns

a) If a participating source shuts down all operations at the source, and withdraws its permit or its permit is revoked or terminates, allotments issued to such a source for each seasonal allotment period after the shutdown occurred, except as provided in subsection (d), shall be subject to the following:

1) 80 percent of all such ATUs shall continue to be allotted to the owner or operator of such source or its duly authorized recipient; and

2) 20 percent of all such ATUs shall be issued to the ACMA.

b) Except as provided in subsection (c) of this Section, the owner or operator of any participating source that shuts down all operations and withdraws its CAAPP permit shall submit a written request to have its status changed to a general participant, upon withdrawal, revocation or termination of its permit.

c) The owner or operator of any participating source that shuts down all operations may authorize the issuance of future ATUs to the Transaction Account of another participating source, new participating source or general participant by submitting a transfer agreement authorizing a permanent transfer of all future ATUs. The CAAPP permit of any participating source or new participating source designated to receive future allotments of ATUs pursuant to such a transfer agreement shall be modified to reflect this transfer upon reopening or renewal.

d) The consolidation of operations of two or more participating sources shall not be considered a source shutdown for the source that withdraws its permit or its permit is revoked or terminates if the participating sources are under common control of the same persons or persons under common control. In the event of such a consolidation, 100 percent of the participating source's allotment of ATUs shall be transferred to the participating source that remains in operation. The transfer of the ATUs, pursuant to this subsection, shall be done pursuant to subsection (c) of this Section.

SUBPART E: ALTERNATIVE ATU GENERATION

Section 205.500 Emissions Reduction Generator

Any participating source, new participating source or general participant may submit a proposal for issuance of ATUs to it based on VOM emissions reductions, as specified in subsection (a) of this Section, achieved by any source or group of sources with an operating permit(s) other than a participating source or new participating source. The owner or operator of each source from which the VOM emissions reductions have been or will be achieved shall certify its acceptance of the terms of the proposal and that it has achieved or will achieve the emissions reductions specified in the proposal. An emissions reduction generator may apply for a modification to its operating permit to incorporate limitations that make the VOM emissions reductions specified in the relevant proposal enforceable.

a) ATUs will only be issued pursuant to this Section if based on actual VOM emissions reductions that meet one or more of the following:

1) If, based on the same actual production rate, VOM emissions at the source for any seasonal allotment period beginning in 1999 are or will be lower due to the use of technology or materials at the source than if operating at the same production rate at the emissions level allowed by applicable requirements effective in 1996 or any requirements included in the State Implementation Plan, provided such reductions occurred after 1990;

2) The source shuts down a portion or all of its operation(s) after 1996 and withdraws the relevant operating permit(s), provided the VOM emissions

from the shut down activity or activities will not be distributed elsewhere within the Chicago ozone nonattainment area; or

3) The source(s) curtails its seasonal production activity resulting in an actual reduction in VOM emissions during any seasonal allotment period beginning in 1999, provided the VOM emissions from the curtailment will not be distributed elsewhere within the Chicago nonattainment area. Such emissions reduction shall be based on the difference between the average production level for the two seasonal allotment periods prior to the year of curtailment and the curtailed production level, calculated at the VOM emission rate allowed by applicable requirements effective in 1996.

b) If any proposal is based on a shut down of operations, as specified in subsection (a)(2) of this Section, that results in seasonal emissions reductions of 10 tons or more, 20 percent of ATUs issued based on such an emissions reduction generator proposal shall be allocated to the ACMA.

c) Any proposal based on seasonal emissions reductions of 10 tons or more and the Agency's approval thereof shall be subject to the public notice requirements of Section 39.5 of the Act.

d) Any proposal submitted shall include the following:

1) Information identifying the source(s) from which the VOM emissions reductions has been or will be achieved and its owner or operator;

2) An explanation of the method used to achieve the VOM emissions reductions;

3) Relevant information describing the nature of the underlying activity that generated the VOM emissions and the relationship of the units at which the VOM emissions reduction occurred to other units or sources performing the same or related activity in the Chicago ozone nonattainment area, if the VOM emissions reduction is attributable to a partial or complete source shutdown or a production curtailment, as specified in subsections (a)(2) or (a)(3) of this Section, respectively;

4) The amount of VOM emissions for the two seasonal allotment periods prior to the year(s) of curtailment, including supporting calculations, if the VOM emissions reduction is attributable to a production curtailment as specified in subsection (a)(3) of this Section;

5) The amount of the VOM emissions reduction, including supporting calculations and documentation, such as material usage information;

6) The name and address of the participating source(s), new participating source(s) or general participant(s) to which ATUs will be issued, including the name and telephone number of the account officer for such source or participant; and

7) The owner or operator of each proposed emission reduction generator shall certify its acceptance of the terms of the proposal and certify that it has achieved or will achieve the emissions reductions specified in the proposal.

e) The owner or operator of any emissions reduction generator may modify its operating permit to incorporate limitations that make the VOM emissions reductions specified in the relevant proposal enforceable.

f) If the emissions reduction generator does not modify its permit, as specified in subsection (e) of this Section, or experiences a shutdown, as specified in subsection (a)(2) of this Section, and the proposal is submitted prior to the availability of actual VOM emissions data from the relevant seasonal allotment period, the Agency shall determine if the proposal is acceptable on a preliminary basis and provide notification of this determination. The Agency shall not issue final approval, in accordance with subsection (g) of this Section, of any such proposal until the actual VOM emissions data is submitted.

g) The Agency shall notify the applicant in writing of its final decision with respect to the proposal within 45 days of receipt of such proposal or receipt of VOM emissions data to verify that the specified reductions occurred, whichever occurs later. If the Agency denies or conditionally approves a proposal, this written notice shall include a statement of the specific reasons for denying or modifying the proposal. The Agency's determination as to the approvability of any proposal submitted pursuant to this Section is subject to review by the Board as provided at 35 Ill. Adm. Code 105.102, provided the proposed emissions reduction generator is not requesting a permit revision. If such a permit revision is requested, the applicable permit review and appeal procedures shall apply.

h) If the Agency deems that the proposal is sufficient to receive final approval, the Agency shall issue ATUs in accordance with the following:

1) Any ATUs issued pursuant to this subsection shall be issued to the participating source(s), new participating source(s) or general participant identified in the proposal;

2) If the emissions reduction generator modifies its operating permit as specified in subsection (e) of this Section, to incorporate limitations that

make the VOM emissions reductions specified in the relevant proposal enforceable, ATUs shall be issued on the date such source is required to comply with the limitations in the permit and for each seasonal allotment period thereafter in which the VOM emissions reductions are required by the source's permit;

3) If the proposal is based on a partial or complete shut down, as specified in subsection (a)(2) of this Section, ATUs shall be issued before the seasonal allotment period for each year specified in the proposal;

4) If the emissions reduction generator does not modify its permit and the proposal is submitted prior to the availability of actual VOM emissions data from the relevant seasonal allotment period(s), the Agency shall issue ATUs upon final approval which shall occur after actual VOM emissions data is evaluated for the relevant seasonal allotment period;

5) If the emissions reduction generator includes information on actual VOM emissions reductions during the seasonal allotment period for which ATUs are sought, ATUs will be issued by the Agency upon final approval of the proposal;

6) Except as provided in subsection (h)(7) of this Section, ATUs issued pursuant to this subsection shall only be valid for the seasonal allotment period in which the emissions reductions were achieved; and

7) If the VOM emissions reductions specified in a proposal are incorporated into the emissions reduction generator's permit or, if the emissions reduction generator shuts down all or a portion of its operations and withdraws all relevant operating permits, ATUs issued shall be valid for the seasonal allotment period following issuance and for the next seasonal allotment period.

Section 205.510 Inter-Sector Transaction

Any person may submit a proposal to the Agency to have ATUs issued to the Transaction Account of a participating source, new participating source or general participant equivalent to VOM emissions reductions from mobile sources or area sources. Any such proposal for the VOM emissions reduction project is subject to Agency review and approval, shall be consistent with laws and regulations and shall include all supporting documentation. The Agency shall review all such proposals in accordance with the following:

a) Regulatory Based Proposal

If the VOM emission reductions that have been generated or will be generated are pursuant to a regulation that provides the procedure to determine VOM

emissions reductions and allows for such reductions to be converted to ATUs, the Agency shall approve the proposal if based on the provisions of the applicable regulation. The Agency shall approve, conditionally approve or deny any complete and adequately supported proposal within 45 days of the Agency's receipt thereof by sending written notification of its decision. If the Agency denies or conditionally approves a proposal, this written notice shall include a statement of the specific reasons for denying or modifying the proposal.

b) Other Proposals

If the proposal is based on VOM emissions reductions that have been generated or will be generated which are beyond VOM emissions reductions required by any mandatory applicable rules, the proposal shall include an explanation of the method(s) used to achieve the VOM emissions reductions and the method(s) used to quantify the VOM emissions reductions, including supporting documentation and calculations. The Agency shall evaluate the validity of VOM emission reductions that allegedly were generated or will be generated and approve, conditionally approve or deny any complete proposal within 90 days of the Agency's receipt by sending written notification of its decision to the source. If the Agency denies or conditionally approves a proposal, this written notice shall include a statement of the specific reasons for denying or modifying the proposal.

c) No ATUs shall be issued based on mobile or area source VOM emissions reductions unless a proposal, in accordance with this Section, has been approved by the Agency.

d) All ATUs issued pursuant to a proposal approved pursuant to this Section shall be issued to the Transaction Account identified in the proposal.

e) The Agency’s determination that a proposal submitted pursuant to this Section is denied or conditionally approved is subject to review by the Board as provided at 35 Ill. Adm. Code 105.102.

SUBPART F: MARKET TRANSACTIONS

Section 205.600 ERMS Database

a) The Agency or its designee shall maintain a bulletin board that shall be available for public access on which a listing of the status of ATUs will be posted. Other public information and notices will also be posted and participating sources, new participating sources and general participants may post ATUs available for purchase or wanted for purchase. The bulletin board shall include the following information on ATUs:

1) Date issued, and source issued to;

2) Where applicable, date transferred, source or person transferred to;

3) Status of ATUs in each account, i.e., available for use, or date retired or date expired; and

4) Posted each week during the reconciliation period and no less than monthly at all other times, the average price paid for ATUs transferred the previous week or the previous month, as appropriate.

b) The Agency or its designee shall maintain a Transaction Account database. Information contained on this database shall be considered the official record of the ERMS. Account officer(s) may request status updates for accounts for which they are designated. The database shall include information on all ATUs held in each account.

c) The Agency or its designee shall separately maintain a listing of all ATUs expired or retired within the most recent five years, including the date of expiration or retirement.

Section 205.610 Application for Transaction Account

a) Each participating source, new participating source and general participant shall apply for and obtain authorization for a Transaction Account from the Agency prior to conducting any market transactions. Each participating source shall submit to the Agency its completed application for a Transaction Account no later than 30 days prior to the beginning of the first seasonal allotment period in which the source is required to participate. Each new participating source shall submit to the Agency its completed application for a Transaction Account no later than 30 days prior to the beginning of the first seasonal allotment period in which it is operational.

b) Each Transaction Account application shall include the following information:

1) The name and address of the participating source, new participating source or general participant, and the name and address of its owner or operator;

2) The names and addresses of all designated account officers;

3) The certification specified in Section 205.620(a)(5) of this Subpart signed by each account officer; and

4) For a participating source or new participating source, identification of the CAAPP permit number for the source.

c) Special Participants

Any person may purchase ATUs to retire for air quality benefit only. Such person shall be a special participant and shall register with the Agency prior to its first ATU purchase. Special participants will not have Transaction Accounts in the Transaction Account database. All ATUs purchased by special participants will be retired effective on the date of purchase and will be listed as retired in the appropriate database.

d) Special participants will be given a registration number by the Agency so that their purchases of ATUs can be recorded.

Section 205.620 Account Officer

a) Each participating source, new participating source or general participant must have an account officer designated for each of its Transaction Accounts. The account officer shall be the only person authorized to make ATU transactions involving such designated Transaction Account. At least one account officer must certify each official document that pertains to a designated Transaction Account or associated market transactions. Account officers may be employees or contractors of participating sources, new participating sources or general participants. No participating source, new participating source or general participant may engage in ATU transactions if it does not have an account officer approved by the Agency. Each account officer shall satisfy all of the following:

1) Be at least 18 years of age;

2) Be an American citizen or a legal alien;

3) Have not been convicted of or had a final judgment entered against him or her in any State or federal court for a violation of State or federal air pollution laws or regulations, or for fraud;

4) Be scheduled to attend the next scheduled training program or has already completed the program; and

5) Certify to the following statement as a part of the relevant Transaction Account application:

I certify that I satisfy all of the requirements for an account officer. I am aware that I may be disqualified from acting as an account officer in

the State of Illinois, pursuant to this Part, if any information submitted in this application is determined to be false or misleading.

b) Account Officer Training Program

Except as provided in subsection (d) of this Section, each applicant must satisfactorily complete the training program for account officers conducted by the Agency or its designee prior to acting as an account officer.

1) To attend the account officer training program, a person must enroll with the Agency prior to the date for the next scheduled training program.

2) The training program shall cover, at a minimum, the following topics: an overview of the ERMS, forms for the ERMS, market transaction procedures, and operation of the ERMS Databases.

3) The account officer training program will be offered at least once annually, and may be offered more frequently, depending upon demand. The Agency or its designee shall publish advance notice of the time, date and location for each training program.

c) Disclaimer

The Agency and the State of Illinois do not endorse or guarantee the conduct or quality of work by account officers who have been approved by the Agency, nor does it endorse or guarantee the validity of any representations or ERMS market transactions offered or made by account officers who have been approved by the Agency.

d) Expedited Approval of Account Officer

In the event that an account officer unexpectedly leaves that position, the participating source, new participating source or general participant may request permission from the Agency to allow for a new account officer for up to one year, provided the participating source, new participating source or general participant submits a written certification in accordance with subsection (a)(5) of this Section and affirms that the candidate for expedited approval by the Agency shall complete the training program, in accordance with subsection (b) of this Section, no later than one year from the date the expedited approval is requested.

Section 205.630 ATU Transaction Procedures

Recognized sales and purchases of ATUs may be made between any two Transaction Accounts or from a Transaction Account to the ACMA. A sale of ATUs may also be made from a

Transaction Account to a special participant. No sale of ATUs shall be recognized from a special participant to any other person.

a) Transfer of ATUs shall be subject to the following requirements:

1) Transfers between Transaction Accounts may only be made by the account officers for both accounts;

2) All ATU transfers shall be duly authorized by the account officers for both Transaction Accounts, or, if the ATUs are being transferred to a special participant, the account officer of the Transaction Account of the transferor and a representative of the special participant;

A) Duly authorized ATU transfers shall identify the ATU(s) involved in the transaction;

B) Written ATU transfer agreements signed by the account officers for both Transaction Accounts may authorize the transfer of ATUs for more than one season. If a transfer agreement authorizes the future transfer of ATUs for any season for which ATUs have not yet been issued for use, the ATUs shall be automatically transferred to the buyer's Transaction Account for each year such transfer is authorized pursuant to the transfer agreement, in which case the account officers for each Transaction Account will be notified of this transfer;

3) No transfer shall be considered official for purposes of the ERMS until entered into the Transaction Account database;

4) The Agency or its designee shall enter ATU transfers into the Transaction Account database within one week of the Agency receiving notification of a duly authorized ATU transfer; and

5) Any ATU transfer agreements entered into after December 31 of a given year may not be used by the buyer to cover emissions from the preceding seasonal allotment period, but may only be used prospectively.

b) The account officers involved in ATU transfers shall report the purchase price for all ATU transfers to the Agency or its designee and shall indicate whether consideration other than the purchase price reported was involved in the transfer.

c) Transaction Requirements

1) Expired or retired ATUs may not be bought or sold;

2) The Transaction Account database must show ATUs proposed for transfer as being held by the selling entity. After such transfer is official as specified in subsection (a)(3) of this Section, the transferee's Transaction Account will show the ATUs subject to such transfer as being held in this Transaction Account;

3) The minimum sale allowed under the ERMS shall be one ATU; and

4) No sale may include partial ATUs.

d) Official Record of Transactions

1) The official record of all ATU transactions and the current status of all ATUs shall be the Transaction Account database.

2) Account officers shall be allowed to inspect their Transaction Account(s) in the Transaction Account database. Any discrepancies found by the account officer shall be reported to the Agency or its designee along with a request for correction. All data supporting such request shall be sent along with the request for correction. A request for correction may not be used to alter an allotment.

3) After the end of each reconciliation period, the Agency shall retire ATUs in the Transaction Account of each participating source or new participating source in the amount specified in Section 205.150(c) or (d) of this Part. If the source does not have sufficient ATUs in its Transaction Account to account for its VOM emissions from the preceding seasonal allotment period, the source shall be subject to emissions excursion compensation in accordance with Section 205.730 of this Part. ATUs shall be retired in order of issuance, unless the account officer for the Transaction Account notifies the Agency in writing to specify which ATUs in the Transaction Account should be retired.

SUBPART G: PERFORMANCE ACCOUNTABILITY

Section 205.700 Compliance Accounting

a) The owner or operator of each participating source or new participating source shall maintain and retain for five (5) years at the source or at another location agreed to by the Agency, in conjunction with the records it maintains to demonstrate compliance with its CAAPP permit, all of the following documents as its compliance master file:

1) A copy of its seasonal component of its Annual Emissions Report;

2) Information on actual VOM emissions, as recorded in accordance with Section 205.335 of this Part, and as required by the CAAPP permit for the source; and

3) Copies of any transfer agreements for the purchase or sale of ATUs and other documentation associated with the transfer of ATUs.

b) Compliance Master File Review

1) The owner or operator of each participating source or new participating source shall allow the Agency or an authorized representative to enter and inspect the premises in accordance with Section 39.5(7)(ii) of the Act and to review its compliance master file. [415 ILCS 5/39.5(7)(ii)(1996).]

2) After the conclusion of each compliance master file review, a report shall be prepared by the Agency and issued to the inspected source that includes the following information:

A) An identification of any noncompliance with the requirements of this Part; and

B) An evaluation of increases and decreases in emissions of VOMs that are also hazardous air pollutants, as related to ATU transactions.

3) Nothing in this Part shall affect any other obligations of a source to allow inspection(s) under State or Federal laws or regulations.

Section 205.710 Alternative Compliance Market Account (ACMA)

a) The Agency or its designee shall operate the ACMA. The purpose of the ACMA is to serve as a secondary source of ATUs that may be purchased by participating sources and new participating sources, as specified in this Section.

b) The ATUs in the ACMA will have an indefinite life so long as they remain in the ACMA, but, once purchased, must be used either for the preceding or next seasonal allotment period. If these ATUs are not used for compliance in that seasonal allotment period, they will expire.

c) ATUs in an amount equal to one percent of each year's allotment shall be issued to the ACMA, beginning in 1999. In addition, ATUs shall be deposited into the ACMA due to source shutdowns, as specified in Sections 205.410(a) and

205.500(b) of this Part. ATUs for the ACMA may also be obtained by the Agency in the following ways:

1) The Agency or its designee is authorized to accept voluntary contributions of ATUs from participating sources or other persons for deposit into the ACMA.

2) The Agency is authorized to deposit ATUs from its purchase of ATUs or to deposit ATUs created from emissions reductions it generates beyond reductions otherwise required by statute or regulation for attainment of the NAAQS for ozone.

d) Regular Access to ACMA

1) Regular access to the ACMA shall be available when there is sufficient positive balance of ATUs to supply the requesting source. Any participating source or new participating source may apply to the Agency during the reconciliation period for regular access to the ACMA to purchase ATUs for the preceding seasonal allotment period.

2) Within 15 days of receipt of any request for regular access to the ACMA, the Agency shall notify the source if regular access to the ACMA is available or, if there are insufficient ATUs in the ACMA for regular access. The Agency shall also advise any participating source that special access is available when regular access is unavailable.

3) After being granted regular access to the ACMA by the Agency, a participating source or new participating source may purchase ATUs from the ACMA at the rate of $1,000 per ATU or 1.5 times the average market price, as determined by the Agency, whichever is less. ATUs shall only be available at 1.5 times the market price if sufficient single season ATUs transfers have occurred with a purchase price that fully reflects the consideration involved in the transfer to establish an average market price. All payments for ATUs from the ACMA shall be made to the Agency or the Agency's designee for deposit into the Alternative Compliance Market Account Fund.

e) Special Access to ACMA

Special Access to the ACMA shall be available to participating sources, in accordance with this subsection, when the ACMA balance is not sufficient to meet the needs of requesting participating sources.

1) The Agency shall credit the ACMA with up to one percent of ATUs from the seasonal allotment for the next seasonal allotment period as an

advance to provide assistance for special access to be granted, as provided in subsection (e)(2) of this Section. Special access to the ACMA shall only be allowed to the extent that such access does not exceed this one percent of the next seasonal allotment.

2) To the extent allowed pursuant to subsection (e)(1) of this Section, the Agency shall grant special access to the ACMA to any participating source if the source submits a written request demonstrating that the following exist:

A) During the reconciliation period the source has not been able to obtain regular access to the ACMA and has not been able to obtain ATUs in the market; and

B) Actual seasonal emissions have exceeded ATUs held by the source for the applicable seasonal allotment period.

3) After being granted special access to the ACMA, a participating source may purchase ATUs at the rate of $1100 per ATU or 2 times the average market price, as determined by the Agency, whichever is less. ATUs shall only be available at 2 times the market price if sufficient single season ATUs transfers have occurred with a purchase price that fully reflects the consideration involved in the transfer to establish an average market price. All payments for ATUs from the ACMA shall be made payable to the Agency or the Agency's designee for deposit into the Alternative Compliance Market Account Fund.

4) The Agency shall provide written notification, within 15 days of receipt of any request for special access to the ACMA, allowing or denying special access to the ACMA to any participating source requesting such access. If the Agency denies such access, this written notification shall include its reasons for denying access.

f) Special access to the ACMA will create a need to generate sufficient VOM emissions reductions during the subsequent calendar year to offset the ATUs distributed; in this instance, the Agency shall:

1) Offset these ATUs by crediting any expired ATUs from the Transaction Accounts of all ERMS participants to the ACMA after the end of the reconciliation period;

2) Seek to achieve an equivalent amount of VOM emissions reductions by the end of the subsequent year to offset these ATUs; or

3) Credit the ACMA with the one percent of ATUs, as needed, from the next seasonal allotment, as provided in subsection (e)(1) of this Section.

g) The Agency is authorized to use moneys derived from the sale of ATUs from the ACMA to develop and implement additional VOM emissions reductions. If the ACMA is operating without a positive balance, the Agency shall endeavor to generate new emissions reductions whenever possible.

h) Limitations on Operation of ACMA

The ability of new participating sources to obtain ATUs from the ACMA shall be limited through the seasonal allotment period of 2002, in the aggregate, to no more than 30 percent of the available ACMA balance at the start of each seasonal allotment period unless ATUs are available after access by all participating sources. In such case, new participating sources may obtain ATUs from the ACMA up to 50 percent of the available ACMA balance at the start of each seasonal allotment period.

i) If the Agency denies special access to the ACMA to any participating source, such source may petition the Board for review of the Agency's denial in accordance with the procedures specified at 35 Ill. Adm. Code 105.102.

Section 205.720 Emissions Excursion Compensation

The Agency shall obtain emissions excursion compensation from any participating source or new participating source that does not hold ATUs in accordance with Section 205.150(c) or (d) of this Part by the conclusion of the reconciliation period, unless the participating source or new participating source which had seasonal emissions for the 1999 seasonal period but was not issued a CAAPP permit prior to January 1, 1999. The participating source or new participating source which had seasonal emissions for the 1999 seasonal period but was not issued a CAAPP permit prior to January 1, 1999 is required to obtain ATUs at a ratio of 1 to 1. The Agency shall obtain the emission excursion compensation for all other participating sources or new participating sources pursuant to the following procedures.

a) The Agency shall issue an Excursion Compensation Notice to any such source when an apparent emissions excursion is identified by the Agency.

b) Except as provided in subsection (c) of this Section, the Excursion Compensation Notice shall require the source to provide compensation in the following manner:

1) The participating source or new participating source shall purchase ATUs from the ACMA in an amount equivalent to 1.2 times the emissions excursion;

2) For the second consecutive seasonal allotment period in which an emissions excursion occurred, the participating source or new participating source shall purchase ATUs from the ACMA in an amount equivalent to 1.5 times the emissions excursion; or

3) If the ACMA balance is not adequate to cover 1.2 times or, when required, 1.5 times the total emissions excursion amount, the Agency shall deduct ATUs equivalent to 1.2 times or, when required, 1.5 times the total emissions excursion or any remaining portion thereof from the source's next allotment of ATUs.

c) Within 15 days of receipt of an Excursion Compensation Notice, the owner or operator of the subject source may apply to the Agency to request that ATUs in an amount equivalent to 1.2 times or, when required, 1.5 times the emissions excursion be deducted from the source's next seasonal allotment, rather than acquired from the ACMA.

d) Any source issued an Excursion Compensation Notice may contest the Agency's findings by filing a petition with the Board requesting review of the Emissions Excursion Compensation Notice in accordance with the procedures specified in 35 Ill. Adm. Code 105.102.

e) If any source contests the Agency's findings in the Excursion Compensation Notice, the Agency shall withhold ATUs in an amount equivalent to 1.2 times or, when required, 1.5 times the amount of the alleged emissions excursion from the source's next seasonal allotment. These ATUs shall be withheld until the Board issues a final order resolving the source's petition contesting the Agency's Excursion Compensation Notice. If the source prevails before the Board, the ATUs withheld shall be transferred to the source's Transaction Account. If the Agency prevails before the Board, the ATUs withheld shall be retired to offset the emissions excursion.

f) Sources that provide Emissions Excursion Compensation shall not be subject to enforcement authority granted to the State or any person under applicable State or Federal laws or regulations or any permit conditions. The enforcement authority of the State or any person is only limited by this subsection as it applies to an emissions excursion.

Section 205.730 Excursion Reporting

Upon issuance of each Excursion Compensation Notice to any source that has already had one previous admitted or adjudicated emissions excursion, the source shall submit to the Agency any additional reports required by the source’s permit pursuant to Section 39.5(7)(f) of the Act. [415 ILCS5/39.5(7)(f)(1996).]

Section 205.740 Enforcement Authority

Except as provided in Section 205.720(f) of this Subpart, nothing in this Part limits the State's authority to seek penalties and injunctive relief for any violation of any applicable State law or regulation or any permit condition, as otherwise provided in the Act. Nothing in this Part limits the right of the Federal government or any person to directly enforce against actions or omissions which constitute violations of permits required by the Clean Air Act or applicable federal environmental laws and regulations.

Section 205.750 Emergency Conditions

VOM emissions that are a consequence of an emergency, and are in excess of the technology-based emission rates which are achieved during normal operating conditions, to the extent that such excess emissions are not caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operation error, shall be deducted from the calculation of actual VOM emissions during the seasonal allotment period in which the emergency occurred, subject to the following:

a) The owner or operator of the participating source or new participating source shall submit an initial emergency conditions report to the Agency within two days of the time when such excess emissions occurred due to the emergency. The submittal of this initial emergency conditions report shall be sufficient to fulfill the notice requirements of Section 39.5(7)(k) of the Act as it relates to VOM emissions at the source if the report provides a detailed description of the emergency, any steps taken to mitigate emissions and corrective actions taken, to the extent practicable. [415 ILCS 5/39.5(7)(k)(1996).] The final report shall contain the following information:

1) A description of the cause(s) of the emergency and the duration of the episode;

2) Verification that the source was being operated properly at the time of the emergency;

3) A demonstration that the source took all reasonable steps to minimize excess VOM emissions during the emergency period, including but not limited to the following actions, if technically and economically feasible:

A) The level of operation of the affected emission unit(s) was minimized;

B) The level of emissions from the affected emission units(s) was minimized by use of alternative raw materials or alternative control measures;

C) The duration of the excess emissions was minimized; and

D) The amount of VOM emissions from other emission units at the source or other sources located in the Chicago ozone nonattainment area owned or operated by the person or entity were reduced;

4) A demonstration that appropriate corrective action(s) were taken promptly;

5) A demonstration that the affected emission units were:

A) Being carefully and properly operated at the time of the emergency, including copies of appropriate records and other relevant evidence;

B) Properly designed; and

C) Properly maintained with appropriate preventative maintenance; and

6) An estimate of the amount of VOM emissions that occurred during the emergency in excess of the technology-based emission factor achieved during normal operating conditions, including supporting data, the relevant emissions factor, and calculations.

b) The owner or operator of any such source may supplement its initial emergency conditions report within 10 days after the conclusion of the emergency situation.

c) The Agency must approve, conditionally approve or reject the findings in the final emergency conditions report submitted by the source in writing within 30 days of receipt of a complete report, subject to the following:

1) If the Agency concurs with the emergency conditions report, the source is not required to hold ATUs for the excess VOM emissions attributable to the emergency;

2) If the Agency approves with conditions or rejects the emergency conditions report, the source shall be required to hold ATUs by the end of the reconciliation period in an amount not less than the emissions identified as excess in the emergency conditions report or provide emissions excursion compensation in accordance with Section 205.720 of this Part, if an emissions excursion occurred;

3) If the Agency approves with conditions an emergency conditions report, the Agency must identify in its written notice the amount of VOM emissions that are not attributable to an emergency; and

4) If the Agency approves with conditions or rejects a source's emergency conditions report, the source may raise the emergency as an affirmative defense pursuant to Section 39.5(7)(k) of the Act in any action brought for noncompliance with this Part or an action brought to review the Agency's issuance of an Excursion Compensation Notice, as provided in Section 205.720(d) of this Subpart.

d) Nothing in this Section relieves any source of any obligation to comply with other applicable requirements, permit conditions, or other provisions addressing emergency situations.

Section 205.760 Market System Review Procedures

Beginning in 2000, the Agency shall prepare an Annual Performance Review Report that addresses the effect of VOM emissions reductions in the Chicago ozone nonattainment area on progress toward meeting the RFP requirements and achieving attainment of the NAAQS for ozone by 2007.

a) The Annual Performance Review Report will review trends and patterns which may have emerged in the operation of the ERMS, and shall include, but not be limited to, the following:

1) Total aggregate VOM emissions during the previous seasonal allotment period;

2) The number of ATUs retired for compliance purposes or for air quality benefit, currently being banked, or used by new participating sources for the previous seasonal allotment period;

3) An evaluation of trading activities, including sources with no trading activity, sources that are net purchasers of ATUs and sources that are net sellers of ATUs;

4) ACMA transactions since the preparation of the previous report and the account balance;

5) A summary of emissions reduction generator and inter-sector proposals;

6) Distribution of transactions by geographic area or character of source;

7) Availability of ATUs for purchase;

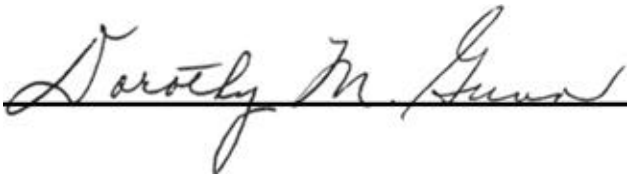
8) The average market price for ATU transactions from the previous seasonal allotment period; and

9) Trends and spatial distributions of hazardous air pollutants.

b) The Agency shall prepare the Report by May 15 of the year following the seasonal allotment period addressed by the Report. The Agency will make copies of its Report available to interested parties upon request.

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 10th day of July 1997, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board