ILLINOIS POLLUTION CONTROL BOARD
October 2, 1997

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

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by K.M. Hennessey, J. Yi, 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. IEPA's rulemaking proposal adds 35 Ill. Adm. Code 205 to the Board's current regulations. The proposed rule creates an emissions reduction market system (ERMS) in order to reduce emissions of volatile organic material (VOM) in the Chicago area. IEPA believes that the ERMS is a cost-effective way to achieve these reductions, which are required by the federal Clean Air Act (CAA), 42 U.S.C. §§ 7401 through 7671q (1997), and certain directives of the United States Environmental Protection Agency (USEPA). The Board agrees and today sends this proposed rule to second notice.

In this second notice opinion and order, the Board sets forth the background for the proposed rule; a summary of the rulemaking proceedings to date; a summary of the proposed rule; a summary of the issues decided in this opinion and order; a discussion of those issues; and the order setting forth the rule, with revisions from first notice marked. This opinion and order addresses only issues that need resolution, or issues on which the Board has substantively changed the rule from first notice. Readers seeking a more comprehensive overview of the rule should consult the first notice opinion and order. See Emissions Reduction Market System Adoption of 35 Ill. Adm. Code 205 and Amendments to 35 Ill. Adm. Code 106 (ERMS) (July 10, 1997), R97-13.

BACKGROUND

IEPA's proposal is before the Board as a result of the CAA and corresponding federal regulations. Section 109 of the CAA, 42 U.S.C. § 7409 (1996), requires USEPA to establish national primary and secondary ambient air quality standards (NAAQS). USEPA promulgated a NAAQS for ozone at 40 C.F.R. § 50.9 (1996) that the Chicago area does not meet. As a result, USEPA designated the Chicago area as a severe ozone nonattainment area pursuant to Section 107 of the CAA, 42 U.S.C. §

7407 (1996).[1] Section 181 of the CAA, 42 U.S.C. § 7511 (1996), 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) (1996), required two separate plan demonstrations to be made by November 1994. The first demonstration was to be IEPA's plan for achieving overall attainment in the Chicago nonattainment area for the NAAQS for ozone. The second demonstration was to be a plan to reduce emissions from the 1990 baseline emissions established for the Chicago nonattainment area each year starting in 1997. The latter plan, referred to as a reasonable further progress (RFP) or rate-of-progress (ROP) plan, is required for each consecutive 3-year period until overall attainment is achieved. Therefore, in November 1994, IEPA was required to provide to 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.

IEPA was not able to provide either demonstration to USEPA. Instead, IEPA and the other Great Lakes states presented findings to USEPA concerning NO_x reduction and VOM transport modeling, and proposed a regional approach to solve the ozone pollution problem. In response, USEPA issued a memorandum on March 2, 1995 (Memorandum). The Memorandum acknowledged the good faith efforts of Illinois and other states to comply with the CAA and established a two-phase program to ensure that Illinois and other states made the required CAA attainment demonstrations. In the first phase, USEPA required 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 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. In the second phase, USEPA required IEPA to demonstrate that it had complied 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 that ozone may be transported and established procedures for states in the eastern half of the country to evaluate and address transport of ozone and its precursors, which led to the formation of the Ozone Transport Assessment Group (OTAG). OTAG is comprised of representatives from the regulated community, government, and environmental groups. USEPA envisioned that OTAG would release its findings by the end of 1996 so that the affected states could take OTAG's findings

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[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 (Nov. 1, 1991).

into account when making their attainment demonstrations. OTAG did not release its findings, however, until the week of June 23, 1997.

In order to allow IEPA to establish an emissions trading system to meet its requirements under the Memorandum, the Illinois legislature adopted Section 9.8 of the Illinois Environmental Protection Act (Act), effective on July 19, 1995. 415 ILCS 5/9.8 (1996). Based on certain findings of the Illinois General Assembly, Section 9.8 of the Act grants 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.

(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. 415 ILCS 5/9.8(c) (1996).

These requirements are in addition to the requirements of Sections 27 and 28 of the Act, 415 ILCS 5/27, 28 (1996), which the Board also must meet when adopting regulations.

On July 10, 1996, USEPA adopted a ''Final Rule Making Findings of Failure to Submit Required State Implementation Plans for Nonattainment Areas for Ozone'' that applied to 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 (July 10, 1996). USEPA stated that to avoid sanctions IEPA must submit the plans required by the first phase of the Memorandum within 18 months (*i.e.*, by January 1998).

On October 7, 1996, IEPA proposed the ERMS as one component of its plan to fulfill Illinois' obligations under the Memorandum and USEPA's July 10, 1996 final rule. [2]

SUMMARY OF RULEMAKING PROCEEDINGS

IEPA filed this proposal on October 7, 1996. The Board held nine days of hearings in this matter and received public comment before issuing a first notice opinion and order on July 10, 1997. After the first notice opinion and order was published, the Board held an additional hearing on August 19, 1997.[3] All the hearings have been held in Chicago because only the Chicago nonattainment area is subject to the program. A public comment period and a reply public comment period were held after the August 19, 1997 hearing. A complete list of exhibits entered into the record, and public comments filed with the Board, is attached to this opinion and order as Attachment 1 and Attachment 2, respectively. Attachment 3 includes a list of acronyms and abbreviations used in this opinion.

On September 29, 1997, IEPA filed a Motion to Strike (Motion) the reply public comment that Dart Container Corporation (Dart) filed (PC 32). In the Motion, IEPA first argues that PC 32 should be stricken because Dart did not file a comment during the initial comment period. Motion at 2. The Board does not find, however,

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[2] The ERMS is one component of the ROP demonstration. IEPA stated that certain federal programs involving mobile sources, such as off-road vehicles, and the cold cleaning degreasing rule, affecting area sources, are other components of the 9% ROP demonstration. Transcript of January 21, 1997, at 71-74, 107-108, 112-114; Exh. 6; Exh. 73 at 2 and Table 3.

[3] The transcript of the August 19, 1997 hearing is cited as "Tr.10 at __." Transcripts of other hearings are cited by date.

that the order establishing the reply comment period limited it to those who had filed an initial comment.

Second, IEPA argues that even if the Board accepts PC 32 generally, it should strike portions of the comment that appear to address issues not raised between the August 19, 1997 hearing and the September 8, 1997 deadline for filing of initial comments. IEPA notes that the hearing officer order limited the scope of reply comments to these issues. Motion at 2-3. In particular, IEPA argues that the portions of PC 32 regarding the definition of Best Available Technology (BAT), BAT and voluntary over-compliance, and burden-shifting in BAT determinations, are not directed at issues raised during this time period.

With regard to the definition of BAT and burden-shifting in BAT determinations, the Board finds that IEPA has interpreted the hearing officer's order too narrowly. The definition of BAT, and the procedures under which BAT would be determined, were addressed in several comments filed during the initial comment period and therefore Dart was free to address these issues in the reply comment period. The Board agrees, however, that Dart's comments on BAT and voluntary over-compliance are not directed at any issue raised between August 19, 1997 and September 8, 1997. The Board denies IEPA's motion except with respect to that portion of PC 32 that discusses BAT and voluntary over-compliance (PC 32 at 6-7), which is hereby stricken.

Today the Board sends this rulemaking proposal to second notice, pursuant to the Illinois Administrative Procedure Act, 5 ILCS 1001-1 *et seq*. (1996). The Board will file this rule with the Joint Committee on Administrative Rules (JCAR) for consideration by that body. Following JCAR's consideration of this rule, and after considering any changes to the rule that JCAR recommends, the Board will adopt the rule.

SUMMARY OF PROPOSED RULE

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 allotment trading units (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.

Part 205 is designed to regulate stationary point sources that are located in the Chicago ozone nonattainment area, that are required to obtain a Clean Air Act Permit

Program (CAAPP) permit, and that have seasonal emissions of at least 10 tons of VOM. Proposed Part 205 regulates these sources by establishing a historical emissions baseline for each source and requiring each source to reduce its emissions from that baseline by 12%. A source will establish its baseline by averaging its VOM emissions during any two of the "ozone seasons" (*i.e.*, May 1 to September 30) of the years 1994, 1995, or 1996. IEPA will then issue sources ATUs in an amount equal to 88% of each source's baseline (*i.e.*, 100% of the source's baseline less the 12% required reduction).

The rule requires sources to hold ATUs in the amount equal to their seasonal emissions of VOM. Sources can either reduce their emissions by 12% or purchase ATUs from the market created by the proposed rule to cover their VOM emissions for each seasonal period.

SUMMARY OF ISSUES

In summary form, the Board reaches the following major conclusions in this second notice opinion and order. A more complete discussion of each of these issues is included in the Discussion section beginning on page 8.

1. The ERMS complies with Sections 9.8(b), 9.8(c)(1), and 9.8(c)(3) of the Act. See pages 8-15.

2. Section 205.150, Emission Management Period: The ERMS will include IEPA's proposed language regarding New Source Review (NSR) offsets, under which compliance with certain ERMS requirements will satisfy NSR requirements. Various revisions to subsections (c) and (d) have been made for clarity and consistency. See pages 15-17.

3. Section 205.200, Participating Source: The ERMS begins in 1999. However, Section 205.720 has been amended so that sources that receive their CAAPP permits on or after May 1, 1998 and that have emissions excursions in 1999 may purchase ATUs to cover the excursion at a ratio of 1:1 rather than 1:2. The ERMS applies to landfills. See pages 17-21.

4. Section 205.310, ERMS Applications: ERMS applications are due on March 1, 1998. See pages 21-22.

5. Section 205.315, CAAPP Permits for ERMS Sources: If a source appeals a baseline determination, (1) the source will be allotted ATUs equal to portion of the source's baseline that is not disputed, but may not sell those ATUs; and (2) the source may emit VOM up to the amount it proposed for its baseline, less the 12% reduction, as applicable. The rule contains similar provisions on BAT determinations. See pages 22-25.

6. Section 205.320, Baseline Emissions: IEPA must consider the production data that sources must provide in an ERMS application when proposing a replacement year. The rule now includes examples of "non-representative conditions." Section 205.320(g)(2) now refers to "reasonable further progress" as well as attainment. The date after which sources' baselines will be increased for voluntary over-compliance is now October 31, 1990. See pages 25-30.

7. Section 205.400, Seasonal Emissions Allotments: The rule now includes language expressly stating that allotments and baselines are not property rights. ATUs will expire in two years or less. See pages 30-33.

8. Section 205.405, Exclusions from Further Reductions: First, compliance with Maximum Achievable Control Technology (MACT) will be determined under the relevant MACT standard. Second, emission units that meet MACT or National Emissions Standards for Hazardous Air Pollutants (NESHAP) on or after May 1, 1999 are subject to the requirement to reduce emissions by 12%. Third, the exclusion from VOM reduction requirements for units that meet the lowest achievable emission rate standard remains. Fourth, the rule does not set an annual emissions limit on hazardous air pollutants or toxic air contaminants. Fifth, in accordance with IEPA's suggestion, the definition of BAT is modified to confirm that a BAT determination will not be more stringent than Best Available Control Technology (BACT) as would be determined contemporaneously under the federal rules for Prevention of Significant Deterioration of Air Quality. See pages 33-46.

9. Section 205.410, Participating Source Shutdowns: New language in subsection (c) confirms that ATUs transferred from a source that is shutting down to another source will not be subject to a 20% reduction. Subsection (d) is deleted. See pages 46-48.

10. Section 205.500, Emissions Reduction Generator: Sources outside the nonattainment area may not participate in the ERMS, and if that is to be allowed in the future, the rule will have to be amended. ATUs may be generated when a non-participating source transfers its operations to a participating source. In those cases, the ATUs generated will be reduced by 12%. See pages 48-53.

11. Section 205.620, Account Officer: A source may have more than one account officer. See page 54.

12. Section 205.700, Compliance Accounting: The rule does not specify how often IEPA must audit sources. See pages 54-55.

13. Section 205.720, Emissions Excursion Compensation: There is no penalty for the sale of invalid ATUs; sufficient incentives already exist to deter such practices. The rule does not require IEPA to follow any particular procedure in determining that an emissions excursion has occurred. See pages 55-56.

14. Section 205.760, Market System Review Procedures: This section remains unchanged. See page 56.

DISCUSSION

This section of the opinion discusses the considerations that informed the Board's conclusions on the issues listed above. The Board also has made some minor changes to the rule for clarity and consistency, and to comply with changes that JCAR has requested, that do not merit discussion. However, all changes from the proposed rule at first notice are marked as revisions in the order that follows this opinion.

Compliance of the ERMS with Section 9.8(b) of the Act

Section 9.8(b) of the Act requires that IEPA "design an emissions market system . . . that takes into account the findings of the national ozone transport assessment . . . ." 415 ILCS 5/9.8(b) (1996). The Board finds that IEPA has satisfied this requirement.

At first notice, the Board acknowledged that because OTAG did not release its findings until the week of June 23, 1997, IEPA did not have the benefit of those findings at the time it proposed the rule or during the hearings leading up to first notice. ERMS (July 10, 1997), R97-13, slip op. at 3, 7. Accordingly, the Board directed IEPA to provide its evaluation of OTAG's findings as they may relate to this rulemaking, including IEPA's rationale for proposing or not proposing any revisions in light of the findings. ERMS (July 10, 1997), R97-13, slip op. at 7.

IEPA stated that OTAG made several important technical findings, including the following: (1) reducing nitrogen oxides (NO_x) on a regional basis is most effective in reducing transported ozone, while VOM reductions are effective local control measures; and (2) regional NO_x emissions reductions due to CAA mandatory controls plus possible OTAG controls will reduce ozone and ozone precursors on a regional scale but are not sufficient to provide for attainment. Exh. 72 at 2. IEPA concluded that the reductions resulting from this ERMS rulemaking are necessary because even after appropriate regional OTAG measures are identified and implemented, additional VOM reductions will be necessary in the Chicago nonattainment area to demonstrate attainment. Tr.10 at 7; Exh. 72 at 1-4. IEPA also maintained that because OTAG's conclusions regarding the reduction of NO_x through market systems are consistent with and supportive of the ERMS, no revisions to the proposed rule are necessary. PC 17 at 3-4.

The Board finds that IEPA has satisfied the requirement of Section 9.8(b) that it design an emissions market system that takes into account the findings of OTAG. Based on its review of the OTAG findings, IEPA concludes that no revisions to the proposed ERMS rules are currently necessary.

Compliance of the ERMS with Section 9.8(c)(1) of the Act

Section 9.8(c)(1) of the Act requires that the rules adopted by the Board include provisions that "[a]ssure 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." 415 ILCS 5/9.8(c)(1)(1996).

At first notice, the Board found that IEPA had satisfied this requirement for this rulemaking. In public comments filed after first notice, the City of Chicago, in supporting the proposed ERMS rules, states that "market-based mechanisms as a regulatory strategy for improving air quality . . . offer increased flexibility and less economic disruption to local economies than traditional command and control regulation." PC 26 at 1. Amoco Corporation also supports the proposed ERMS rules in lieu of a "traditional prescriptive rule," arguing that the proposed rules offer flexibility to the regulated community by letting it determine how to control emissions from its facilities. PC 28 at 1.

The American Bakers Association (Bakers) expresses a concern, however, that the cost of a one ton VOM credit is projected to be $2,800, rather than the $2,200 cost that is the rate in New Jersey. PC 31 at 2. The Bakers state that the available control measures will cost about $500,000, and that the purchase of credits may be necessary to keep bakeries open. PC 31 at 1.

The Board is sympathetic to the concerns of the Bakers, as well as the concerns of the many small businesses that have participated in this rulemaking. The Board fully realizes that the 12% reduction that this rule calls for will impose significant costs. The Board finds, however, that these costs are primarily the result of the reductions mandated by the CAA and USEPA, not the emissions trading system that the ERMS establishes. The Board finds that by allowing businesses the option of purchasing ATUs rather than costly control equipment or limiting production, the ERMS should enable sources to achieve, in a cost-effective way, the reductions that the CAA and USEPA require.

Therefore, no testimony or comment necessitates any revision to the Board's finding at first notice that IEPA had satisfied the requirement of Section 9.8(c)(1) for this rulemaking.

Compliance of the ERMS with Section 9.8(c)(3) of the Act

The Board discusses the following issues raised during this rulemaking: (1) whether IEPA has demonstrated that sources subject to the ERMS will not be required to reduce emissions beyond their proportionate share as required by Section 9.8(c)(3); (2) whether IEPA's inventory for the ERMS failed to include certain sources likely to be affected by the ERMS and whether any such failure would materially affect IEPA's Section 9.8(c)(3) demonstration; and (3) the timeframe of the Section 9.8(c)(3) assurance.

The Board finds that IEPA has satisfied Section 9.8(c)(3) for purposes of this rulemaking and it does not appear that including several sources omitted from the ERMS inventory would materially affect this conclusion. In addition, the Board again finds that IEPA will be required to satisfy Section 9.8(c)(3) if further reductions are sought under the ERMS. In response to several comments, the Board also finds that its interpretation of Section 9.8(c)(3) does not preclude the possibility that if IEPA's plan for overall attainment includes further reductions under the ERMS, IEPA could satisfy Section 9.8(c)(3) by demonstrating that sources subject to the ERMS will not be required to reduce beyond their proportionate share over the timeframe of the attainment plan, even if they may reduce more than their proportionate share during a given ROP period.

Demonstration that Sources Subject to the ERMS Will Not Be Required to Reduce Beyond Their Proportionate Share

Section 9.8(c)(3) of the Act requires that the rules adopted by the Board include provisions that:

> 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. 415 ILCS 5/9.8(c)(3).

At first notice, IEPA argued that Section 9.8(c)(3) did not apply to this rulemaking because the ERMS is not part of a plan for overall attainment of the ozone NAAQS, but rather is part of the State's 9% ROP. IEPA asserted that Section 9.8(c)(3) will not apply until IEPA proposes to use the ERMS for further reductions as part of a plan to actually achieve overall attainment of the ozone NAAQS. At first notice, the Board disagreed and found that Section 9.8(c)(3) applies to this ERMS rulemaking. ERMS (July 10, 1997), R97-13, slip op. at 9-10.

While IEPA argued that it is not required to make the Section 9.8(c)(3) demonstration now, it nevertheless maintained that it had demonstrated proportionality for emissions reductions under the 9% ROP plan. Specifically, IEPA asserted that point

sources are not being asked to reduce emissions beyond their proportionate share because they contributed 22% of the 1996 VOM emissions and they will be responsible for 20% of the emission reductions under the 9% ROP plan. ERMS (July 10, 1997), R97-13, slip op. at 11-12.

The Board stated at first notice that before it could determine whether IEPA had satisfied Section 9.8(c)(3), IEPA would need to confirm and clarify certain information. Accordingly, the Board requested that IEPA respond to a series of specific items posed by the Board and provide any additional information that IEPA believed would assist the Board in its determination. ERMS (July 10, 1997), R97-13, slip op. at 12-14.

In responding to the Board's request, IEPA states that it has had to revise the emissions data it previously relied upon in attempting to make the proportionality demonstration. Exh. 73 at 2. For example, IEPA explains that, while the 9% ROP target of 735.23 tons per day (TPD) in 1999 has not changed, the level of 1996 VOM emissions has been revised upward to 801.05 TPD. Exh. 73 at 2, 5. The prior estimate of 1996 VOM emissions was 781 TPD. Exh. 6.

According to IEPA, to meet the 1999 target, the 9% ROP plan must provide for 65.82 TPD (including growth) in emission reductions (*i.e.*, a reduction from the 1996 level of 801.05 TPD in emissions to the 1999 target of 735.23 TPD in emissions). IEPA states that the 9% ROP plan will provide for a total VOM reduction of 73.48 TPD (including growth): 11 TPD from point sources, 8.85 TPD from area sources, and 53.63 TPD from mobile sources. Accordingly, the expected actual 1999 emissions are 727.57 TPD, which is 7.66 TPD under the 1999 emission target level of 735.23 TPD. Exh. 73 at 5.

IEPA explains that the extra 7.66 TPD in reductions will go toward satisfying contingency requirements. IEPA states that in addition to the 9% ROP requirement, 31.11 TPD in emissions reductions are required for contingency. IEPA asserts that this is satisfied through Phase II reformulated gasoline reductions of 28.30 TPD in the year 2000, plus the 7.66 TPD in extra reductions under the 9% plan. Exh. 73 at 4, 6.

IEPA states that the point source sector accounted for approximately 171 TPD of the 801.05 TPD of 1996 VOM emissions, or 21.3% of 1996 VOM emissions. Exh. 73 at 6-7. IEPA also notes that "sources subject to the ERMS program" (a subset of the point source sector) accounted for 14.1% of 1996 VOM emissions, or 113 TPD. Exh. 73 at 7. In addition, IEPA states that (1) all point source sector reductions under the 9% ROP plan will result from the ERMS; and (2) the point source sector will account for 14.9% of the reductions under the 9% ROP plan (*i.e.*, 11 TPD of the 73.48 TPD in reductions). Exh. 73 at Tables 3 and 5. IEPA concludes that the 9% ROP plan does not require reductions from the point source sector that exceed its proportional share because the point source sector contributed 21.3% of total 1996 VOM emissions and will account for 14.9% of VOM reductions under the 9% ROP plan. Exh. 73 at 6 and Table 5.

The Board finds that IEPA has satisfied Section 9.8(c)(3) for this rulemaking. For purposes of satisfying Section 9.8(c)(3) in this rulemaking, however, the Board finds it inappropriate to look to the point source sector as a whole when comparing the percentages of past emissions and future reductions. Rather, Section 9.8(c)(3) calls for assurance that "sources subject to the program" will not be required to reduce beyond their proportionate share. 415 ILCS 5/9.8(c)(3) (1996). Accordingly, the relevant comparison for this rulemaking is the percentage of 1996 VOM emissions contributed by sources subject to the ERMS and the percentage of reductions under the 9% ROP plan provided by sources subject to the ERMS.

IEPA's testimony has shown that a number of point sources in the Chicago nonattainment area are not subject to the ERMS. To interpret the statute as suggested by IEPA would allow the incongruous result of having a subset of the point source sector, which may have contributed a relatively small percentage of past emissions, providing for a percentage of future reductions comparable with the entire point source sector's percentage of past emissions, which may have been quite large.

IEPA states that sources subject to the ERMS contributed 14.1% of 1996 VOM emissions. These sources will provide for 14.9% of the VOM emissions reductions under the 9% ROP plan since all point source sector reductions will result from the ERMS. As IEPA states, the word "proportionate" does not suggest that the percentage of reductions "must exactly match" the percentage of emissions. PC 17 at 8. For purposes of this rulemaking, the Board finds that the proportionate share of emissions reductions for sources subject to the ERMS is a percentage comparable with 14.1%, their percentage of 1996 emissions. Accordingly, regarding the Section 9.8(c)(3) assurance, the Board concludes that the 14.9% of emissions reductions to be provided by sources subject to the ERMS does not exceed their proportionate share.

Consistent with these findings and Section 9.8(c)(3) of the Act, the Board amends Section 205.110 as follows:

> 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:
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> * * *
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> d) Assure that ~~stationary~~ sources subject to the ERMS regulatory program will not be required to reduce emissions to an extent that exceeds their proportionate share of the total emissions reductions required of all emission sources~~sectors~~, including mobile and area sources.

Inventory Accuracy

Mr. Lionel Trepanier of the Blue Island Greens testified that he believes IEPA's inventory does not include certain sources likely to be affected by the ERMS, which "causes the point source category of emitters as a group to not contribute a proportionate share of reductions under the proposed rule . . . ." Tr.10 at 125-126. In support, Mr. Trepanier testified that "major point source VOM emitters have not been counted at all, although they have appeared in USEPA AIRS facility database of large VOM emitters continuously since 1990 till the most recent report in 1995." Tr.10 at 126.

In its public comment filed on September 8, 1997, IEPA states that it reviewed the USEPA AIRS Facility Subsystem Database (AIRS database) report of VOM emitters of over 10 tons per year (TPY) referred to by Mr. Trepanier. First, IEPA screened the AIRS database to remove sources that:

> (in this order): 1) had yearly emissions of less than 25 TPY; 2) had seasonal emissions of less than 10 tons per season ("TPS"); 3) had obtained federally enforceable state operating permits ("FESOPs") which limited their annual emissions to less than 25 TPY (thus avoiding CAAPP applicability) and; 4) had shut down plant operations between 1990 and the present. PC 27 at 11.

After IEPA removed "these non-ERMS sources" from the AIRS database, 86 sources remained on the AIRS database that were not on the ERMS list. PC 27 at 11. IEPA states that the absence from the ERMS list of all but 4 of the 86 sources could be explained (*e.g.*, the sources applied for but had not yet received a FESOP, were actually not in the Chicago nonattainment area, or had reported less than 10 TPS as calculated from their 1994 Annual Emissions Reports (AERs)). PC 27 at 11.

Of the remaining 4 sources, IEPA states that 3 were not included because they were late in filing their 1994 AERs. IEPA did not want to rely on estimates for these 3 sources "to prevent overestimating the amount of ERMS reductions from the rulemaking." PC 27 at 11-12. As for the fourth source, IEPA notes that it had been incorrectly classified as being outside the Chicago nonattainment area. According to IEPA, the actual 1994 emissions reported by the 4 sources were 42(18), 33(14), 26(11), and 34(14) TPY (TPS). PC 27 at 12. IEPA concludes that the "ERMS database [is] fully adequate for developing the proposed ERMS." PC 27 at 12.

Initially, the Board notes that Section 9.8(c)(3) of the Act, contrary to the suggestion of Mr. Trepanier, does not mandate that sources subject to the program reduce emissions equal to their proportionate share. Rather, it requires that assurance be made that they not be required to reduce beyond their proportionate share.

As for Mr. Trepanier's assertion that IEPA's inventory does not include certain sources likely to be affected by the ERMS, the Board finds IEPA's response satisfactory.

As set forth above, IEPA explains why four sources had not been included in the ERMS inventory. As these four sources may be sources subject to the ERMS based on the information in the record, it appears that including them could provide some increase to both the percentage of 1996 VOM emissions allocated to sources subject to the ERMS and the percentage of reductions under the 9% ROP plan to come from sources subject to the ERMS. After discussing the four sources, IEPA concludes that the ERMS database is "fully adequate for developing the proposed ERMS." PC 27 at 12. Based on the foregoing, it does not appear that the inclusion of these four sources would materially affect the Board's Section 9.8(c)(3) analysis above.

Timeframe for Section 9.8(c)(3) Assurance

IEPA argues that Section 9.8(c)(3) should not be "viewed as limiting the Board's authority to seek reductions for attainment from different sectors at different intervals." PC 17 at 7-8. By way of illustration, IEPA explains that Section 9.8(c)(3) should not preclude the following scenario:

> USEPA could be scheduled to promulgate a measure to reduce mobile source emissions at a future date but the state may need to proceed with measure directed emissions from other sectors to meet incremental reduction targets required by the Clean Air Act and to progress toward attainment. PC 17 at 8.

The Illinois Environmental Regulatory Group (IERG) appears to be addressing this point as well when it testified that "proportionality has to be demonstrated over a continuum . . . and not regulation by regulation . . . ." Tr.10 at 96. Similarly, IERG stated earlier in this rulemaking proceeding that:

> The measure of proportionality would cover the entire time frame in which the sectors made reductions or were to make reductions as required to meet obligations under the Clean Air Act. In accepting the ERMS concept, the membership recognized that the timing of such reductions would vary. Exh. 76 at 2-3.

IERG concludes that while the proportionality requirement has been satisfied for this rulemaking, "proportionality has not been demonstrated as regards [IEPA's] overall ozone attainment strategy." Exh. 76 at 4.

The Board agrees with IERG that IEPA has satisfied Section 9.8(c)(3) only for purposes of this rulemaking. Again, pursuant to Section 205.400(d), if further emissions reductions are sought under the ERMS, IEPA will be required to satisfy Section 9.8(c)(3) of the Act.

The ERMS is one component of the 9% plan. IEPA has satisfied Section 9.8(c)(3) for purposes of this rulemaking by demonstrating that sources subject to the ERMS will

not be required to reduce emissions beyond their proportionate share of reductions under the 9% ROP plan. IEPA has not yet made an attainment demonstration. The Board did not preclude at first notice, and does not preclude now, the possibility that if IEPA's plan for overall attainment includes further reductions under the ERMS, IEPA could satisfy Section 9.8(c)(3) by demonstrating that sources subject to the ERMS will not be required to reduce beyond their proportionate share over the timeframe of the attainment plan, even if they may reduce more than their proportionate share during a given ROP period.

Section 205.130 Definitions

At first notice, the Board requested that IEPA explain the meaning of "natural" before the word "person" in the definition of "account officer" set forth in Section 205.130. ERMS (July 10, 1997), R97-13, slip op. at 16. IEPA explained that it used this term to ensure that only human beings were account officers, rather than having an entity responsible for a transaction account. PC 17 at 8-9.

The Board finds IEPA's explanation satisfactory and consistent with the requirements of Section 205.620. At page 54 under Section 205.620, the Board discusses having more than one account officer designated to a transaction account.

The Board also revised several definitions for clarity. First, the Board revised the definition of "baseline emissions" to clarify that those emissions are to be determined under Subpart C of this rule. Second, the Board has revised the definition of "reconciliation period" to clarify that a reconciliation period occurs each year. Third, the Board slightly revised the definition of "special participant" for clarity. Finally, the Board received comment on, and has revised, the definition of "Best Available Technology." Those comments are discussed at page 41 under Section 205.405.

Section 205.150 Emissions Management Period

Several participants raised questions regarding Section 205.150(e), which sets forth the requirements pertaining to the NSR offsets requirement for major new sources or existing sources that make major modifications. After reviewing the issue, the Board has elected to adopt IEPA's proposed language for this subsection.

IEPA testified that after the ERMS is in place, any person planning new major projects or major modifications will have to address both the ERMS and NSR. In this regard, IEPA stated that the key area where the ERMS and NSR overlap is in the emission offsets requirement. Exh. 74 at 17. IEPA stated that it designed the offsets requirement in the ERMS proposal to accommodate the NSR offsets so that a separate set of provisions need not be maintained to satisfy the requirements of NSR. *Id*.

The ERMS requires major sources and major modifications, as identified in their permit that authorizes their construction, to hold ATUs in an amount 1.3 times the actual seasonal emissions. Under the ERMS, compliance with this provision satisfies the NSR offsets requirement, which previously had been applied on an annual basis. Exh. 74 at 18.

IEPA notes that Section 173 of the CAA requires that emission offsets be provided for a project as needed to assure ROP. Since ROP for ozone is evaluated in seasonal terms, IEPA believes it is appropriate to address emission offsets in a similar manner. *Id*.

The American Lung Association of Metropolitan Chicago (ALAMC) disagrees with IEPA's position. The ALAMC objects to the substitution of the annual NSR offsets "requirements" with a seasonal requirement to hold ATUs in an amount 1.3 times actual seasonal emissions. PC 30 at 2. The ALAMC believes that Section 205.150(e) would eliminate offset requirements during the non-ozone season and deny the public cleaner air during that period. *Id*. At a minimum, the ALAMC states that the Board must address whether Section 205.150 is consistent with the CAA.

While IEPA did not specifically address the ALAMC's concerns regarding the issue of air quality during the non-ozone season, IEPA did touch upon this issue in addressing the impact of the ERMS on air toxins. In addressing air toxins, IEPA notes that the ERMS is neutral regarding toxic emissions. PC 35 at 18. However, IEPA asserts that such emissions are addressed by programs specifically designed for toxic emissions. *Id*. IEPA maintains that the ERMS does not alter or relax the specific regulatory programs that address air toxins.

Given that the ROP for ozone is evaluated on a seasonal basis, the Board finds it appropriate to address NSR emission offsets on seasonal basis, as proposed in Section 205.150(e). The Board believes that the proposed offsets requirement will provide greater flexibility to sources in meeting the NSR offsets requirement. With regard to the ALAMC's concern about air quality, the Board notes that ozone is a major concern only during the ozone season. Further, the Board agrees with IEPA's position that programs specifically designed to address toxic air contaminants, such as MACT, will address the concerns relating to emission of toxic ozone precursors during the non-ozone season. In light of this, the Board believes that the impact of seasonal NSR offsets on non-ozone season air quality will be minimal. Finally, the Board concludes that the proposed requirements regarding NSR offsets are consistent with the requirements of the CAA. In this regard, the Board agrees with IEPA's position that Section 173 of the CAA requires emission offsets to be provided as necessary to assure ROP.

The Board also has revised Section 205.150(c) and (d) to add or delete references to exceptions that logically should be either included or deleted. For example, Section 205.315 allows certain sources to hold ATUs in an amount less than its VOM emissions when it is appealing an IEPA baseline or BAT determination. The Board has therefore added an exception for Section 205.315 to 205.150(c)'s requirement that a source hold ATUs to cover VOM emissions. Second, the Board believes that the exemptions to the requirement to hold ATUs that Sections 205.220 and 205.225 provide for insignificant emission units and for emissions due to startup, malfunction, or breakdown should be available to new participating sources as well as participating sources. The Board therefore has therefore changed Sections 205.220 and 205.225 accordingly, and added

exceptions for Sections 205.220 and 205.225 to Section 205.150(d). The Board has made other minor changes to Section 205.150 for consistency.

Section 205.200 Participating Source

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 Clean Air Act Permit Program (CAAPP) permit, and has seasonal emissions of at least 10 tons of VOM. Participants in this rulemaking have raised three issues regarding this section: (1) whether the compliance deadline for the ERMS should be extended from 1999 to 2000; (2) whether the date for emissions excursions compensation should be adjusted; and (3) whether the ERMS applies to landfills. As explained below, the Board has maintained the 1999 compliance deadline, adjusts the date for emissions excursions compensation, and finds that the ERMS does apply to landfills.

Compliance Deadline

At first notice, the Board declined to delay the compliance deadline for the ERMS from 1999 to 2000, as IERG and the Chemical Industry Council of Illinois (CICI) had requested. The Board noted that USEPA has required Illinois to demonstrate, by January 2, 1998, that it will achieve a 9% reduction in VOM emissions for the Chicago nonattainment area by 1999. ERMS (July 10, 1997), R97-13, slip op. at 19. Therefore, the Board found the 1999 compliance date appropriate.

IEPA filed a public comment stating that it supported the Board's decision to retain the 1999 compliance date. USEPA also filed a public comment urging the Board to make the rules effective in 1999 rather than in the year 2000. PC 19 at 1-2. USEPA did not discuss the Board's proposed exemption from the emissions excursion compensation penalty for sources that had not received a CAAPP permit by a specified date.

At the August 19, 1997 hearing, Mr. Sidney Marder of IERG reiterated IERG's request that the compliance date be delayed to the year 2000. He also testified that the Board's exemption from emissions excursion compensation penalties for sources that have not received CAAPP permits by January 1, 1999, does not adequately address IERG's concerns. First, Mr. Marder noted that a source will not know what its baseline is until it receives its CAAPP permit. Tr.10 at 97. Under the current proposal, a source that does not receive its permit until just before January 1, 1999, will have only four months before the start of the first ozone season to come into compliance, which "from a business point of view, is an unreasonably short period of time." Tr.10 at 98.

Second, while IERG agreed with the Board that a source might know what its baseline is even before a final permit issues, "the prudent manager may well plan to

expend money for reduction measures or controls as opposed to ATU purchases, but would not actually authorize the expenditure of such funds until a final decision on the CAAPP permit is issued." Ex. 76 at 6.

In a public comment, IERG notes that ERMS applications are currently due on January 1, 1998, which will be only two months after the Board adopts a final ERMS rule. 35 Ill. Adm. Code 205.310(a); PC 20 at 3-4. (As discussed on page 21, the ERMS application date has been delayed to March, 1998.) IERG further points out that by the application deadline, many sources may not have received a CAAPP permit and thus will have to file an ERMS application without knowing whether IEPA has approved the source's CAAPP permit application. PC 20 at 4. IERG states "that it is unreasonable to expect a source to make compliance decisions requiring capital investments based on its anticipation of how the Agency will act on its baseline proposal, as well as the source's overall CAAPP application. The time between CAAPP permit issuance and ERMS required compliance is inadequate to effectuate ERMS compliance control projects." PC 20 at 5.

The ERMS Coalition (Coalition) agrees with IERG that the compliance deadline should be extended from 1999 to 2000. PC 22 at 4. The Coalition agrees that affected sources will not have enough time to reasonably prepare to achieve the required reductions. *Id*.

In its final public comment, IEPA states that delaying the initial ERMS season to 2000 "is simply unacceptable if the ERMS is to fulfill the ROP requirement. This point has been stressed by USEPA time and again. IERG and Coalition have failed to present any rationale supporting the ability of the ERMS to satisfy the ROP requirement if, on its face, the ERMS does not require reductions until 2000." PC 35 at 15.

The Board again concludes that the 1999 compliance date must be retained in order for the Chicago nonattainment area to meet its obligations under the CAA and USEPA's July 10, 1996 final rule (see pages 1-4). As explained below, however, the Board has revised the emissions excursion compensation provisions of the rule to mitigate the hardship that the 1999 deadline may impose.

Emissions Excursion Compensation

At first notice, the Board revised 205.720, which addresses emissions excursion compensation, in response to the concerns of IERG and others regarding the 1999 compliance date. An "emissions excursion" 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 . . . ." 35 Ill. Adm. Code 205.130. Section 205.720 requires sources with emissions excursions to purchase ATUs from the Alternative Compliance Market Account (ACMA) in an amount equivalent to 1.2 times the emissions excursion. 35 Ill. Adm.

Code 205.720(b)(1). In effect, this section penalizes sources that have emissions excursions at the end of the reconciliation period.

At first notice, the Board found that such a penalty would be unfair and inappropriate for sources that had not received CAAPP permits by December 31, 1998. ERMS (July 10, 1997), R97-13, slip op. at 19-20. The Board therefore revised Section 205.720 to require sources that received their CAAPP permits after December 31, 1998, and which also have emissions during the 1999 season, to acquire ATUs at a 1 to 1 ratio rather than a 1 to 1.2 ratio.

The Board received comment on this revision from several participants. IEPA objects to the proposed revision, noting the ERMS must be approved by USEPA as a SIP revision. IEPA stated that USEPA will not approve the program if it is not enforceable. If there is no emissions excursion compensation penalty required for sources that emit VOMs in excess of their ATUs in 1999, IEPA argues, USEPA may not find the rules enforceable. PC 17 at 9. IEPA suggests that the Board revise the rule to allow an exemption from the emissions excursion compensation provisions only for those sources that do not receive a preliminary baseline determination by January 1, 1999, and a draft CAAPP permit by April 30, 1999. The ALAMC concurs in IEPA's comments. PC 30 at 4.

IERG also objected to the Board's revision, but on the grounds that it did not go far enough. Mr. Marder stated that it was arbitrary and unfair to require all sources that have received CAAPP permits before January 1, 1999, to comply with the program. "The January 1, 1999 cut-off presumes that the Agency will somehow opt to issue permits with some recognition of who will need additional time for compliance. IERG doubts that the Agency will issue permits in this manner. We may wind up with facilities being penalized simply by the luck of the draw." Ex. 76 at 6. If the deadline is not extended to 2000, IERG requests that the no emissions excursion compensation be required of sources in 1999. *Id*. The Coalition supports IERG's request. PC 22 at 4.

Jefferson Smurfit Corporation (JSC) believes that "the Board's proposal [to waive emissions excursion compensation penalties for sources that have not received CAAPP permits by January, 1999] is a reasonable compromise that makes appropriate allowance for the undoubted difficulties of getting the ERMS working the first year." PC 23 at 7. JSC states that "IEPA has failed to provide adequate reasons why such a waiver would force U.S. EPA to disapprove the program." *Id*.

The Board is persuaded that the January 1, 1999 cutoff date could be arbitrary and unfair to some sources. The Board recognizes that sources will need time to develop compliance strategies once their baselines are determined, and the four months between the Board's cutoff date of January 1, 1999, and the beginning of the ozone season on April 1, 1999, may be too little time for sources to develop such strategies.

The Board is not persuaded, however, that sources that receive CAAPP permits well in advance of the first ozone season – by, for example, May 1, 1998 – will have too little time to develop compliance strategies. The Board does not believe it necessary to waive emissions excursion penalties for all sources in 1999. The Board therefore has decided to change the cutoff date from January 1, 1999 to May 1, 1998. This date will give sources a full year to develop compliance strategies. The Board also has made other minor changes to Section 205.720 for consistency and clarity.

The Board recognizes that even the May 1, 1998 cutoff may pose problems for some sources. The Board believes, however, that those situations can be better addressed through petitions for variance under Title IX of the Act,415 ILCS 5/35 through 38 (1996).

Finally, the Board does not agree with IEPA that the changes that the Board has made to Section 205.720 render it unenforceable. At the end of the reconciliation period, sources are still required to hold ATUs to cover their seasonal VOM emissions; the Board's revisions only relieved certain sources of the obligation to purchase 1.2 ATUs for each ATU shortfall. The program is therefore still "enforceable."

Applicability of the ERMS to Landfills

Waste Management, Inc. of Illinois (WMI) raised concerns regarding the applicability of the ERMS to landfills in its comments filed during the pre-first notice comment period. PC 5 at 2. Specifically, WMI asserted that the rules should account for the unique emission pattern of landfill gas. WMI requested that the Board modify the regulations to limit the applicability of the ERMS only to landfill gas control equipment rather than the entire landfill. PC 5 at 2. WMI's concern regarding the applicability of the ERMS to landfills was also endorsed by the National Solid Wastes Management Association. PC 8.

At first notice, the Board noted that it was unclear whether the ERMS should apply to landfills generally or only to landfill gas equipment. The Board asked WMI and IEPA to provide additional information concerning landfills in the Chicago nonattainment area that would be subject to the proposed regulations. ERMS (July 10, 1997), R97-13 at 21.

In response to the Board's request, WMI states that four of its five landfills in the Chicago nonattainment area could be covered by the proposed rule if VOM emissions from the entire landfill are considered in determining the total annual emissions. PC 18 at 1. However, WMI notes that none of its landfills would meet the applicability criteria if consideration is given only to emissions from the gas control equipment. WMI also states that there may be other landfills that meet the ERMS applicability criteria.

Additionally, WMI reiterates its concerns regarding the application of the ERMS to landfills. WMI contends that since landfill emissions are from activities that occurred

years ago, a historical baseline approach is, at best inequitable and, at worst, a regulatory taking. PC 18 at 1. WMI asserts that failure to account for the unique emissions patterns of landfills violates Section 9.8(c)(5) of the Act. PC 18 at 2.

WMI states that for some landfills, adjustment to a facility's baseline emissions for voluntary over-compliance may mitigate the inequities caused by using an historical baseline approach. However, WMI notes that such adjustment does not resolve the inequities for newer landfills, which have very low emission rates during the early years of operation. PC 18 at 2. WMI requests that the Board allow the use of anticipated levels rather than historic levels to address the unique gas emission pattern at newer landfills.

In its post-hearing comments, IEPA states that it is not essential to consider issues associated with landfills in this proceeding. IEPA states that it has more closely evaluated how VOM emissions from landfills have been historically estimated. PC 27 at 3. Based upon this evaluation, IEPA believes that when the actual VOM emissions from landfills are estimated by using more realistic data and assumptions like 95% capture of landfill gas, the VOM emissions of landfills will be below the level at which they must participate in the ERMS. PC 27 at 6. Specifically, IEPA states that WMI's landfills and other landfills in the Chicago area will not be required to participate in the ERMS. PC 27 at 3. In light of this, IEPA maintains that landfills do not require special treatment.

The Board finds that if any landfill in the Chicago nonattainment area meets the ERMS applicability threshold, such landfill must be subject to the ERMS just like any other source. Further the Board finds that the ERMS must apply to landfill as a whole, and not be limited to only the gas control equipment. Furthermore, IEPA's evaluation indicates that none of the landfills in the Chicago nonattainment area would meet the ERMS applicability threshold even if emissions from landfills as a whole are considered. The Board accordingly finds the changes that WMI has requested unnecessary.

Section 205.310 ERMS Applications

The Coalition has requested that the Board extend the ERMS application deadline to March 1, 1998. PC 22 at 3. The Coalition notes that the deadline set in the rule, January 1, 1998, was established when it was believed that the rules would be adopted by August 1997; now it is clear that the rules will not be adopted until at least November 1997. *Id*. The Coalition also states that draft ERMS applications have not yet been distributed. *Id*. Finally, the Coalition notes that IPEA has proposed revisions to Illinois' NSR regulations that may impact the baseline determination for certain sources. PC 22 at 4. Dart Container Corporation (Dart) supports the Coalition's suggestion. PC 32 at 2. IEPA agrees that the application deadline should be postponed to March 1998. PC 35 at 1.

The Board agrees that the ERMS application deadline should be delayed until March 1, 1998, because the extensive hearings in this rulemaking will delay the Board's adoption of the rule. Section 205.310 has been revised accordingly. The

Board has similarly modified other dates for consistency. See 35 Ill. Adm. Code 205.205 and 205.318.

Section 205.315 CAAPP Permits for ERMS Sources

This section provides that a source's baseline will be established in its CAAPP permit, and addresses how the baseline will be affected by an appeal. The participants in this rulemaking have raised two issues under this section.

First, Dart suggests that the Board ensure that sources that are appealing their baseline emissions are not precluded from buying ATUs. PC 32 at 3. The Board agrees that such sources should not be precluded from buying ATUs, but sees nothing in the rule that precludes such sources from buying ATUs. The Board therefore declines to add the language that Dart suggests.

The second issue relates to a source's allowable VOM emissions during the appeal of an IEPA baseline or BAT determination. On this issue, the Board has elected to adopt IEPA's most recent proposal regarding the disposition of ATUs while the source's baseline is appealed (with a slight modification for consistency). In summary, the rule now provides that during the pendency of such an appeal, (1) the source will be allotted ATUs equal to portion of the source's baseline that is not disputed, but may not sell those ATUs; and (2) the source may emit VOM up to the amount it proposed for its baseline, less the 12% reduction, as applicable. Similar provisions apply to the appeal of BAT determinations. The Board also has modified Section 205.315(f) for clarity.

At first notice, the Board found that in the event of a controversy between a source and IEPA over the source's baseline or a BAT determination - and consequently the number of ATUs the source will hold - the source should be able to use the portion of the ATUs that are not part of the controversy for compliance or sale. The Board found, however, that the ATUs in dispute should not be used for either sale or compliance. The Board found this treatment consistent with other permit appeals. ERMS (July 10, 1997), R97-13, slip op. at 26.

During the August 19, 1997 hearing, Board Member Hennessey asked IEPA and others to comment on whether the Board should require sources to "pay back" ATUs in dispute if the Board or an appellate court ultimately determined that the source was not entitled to the disputed ATUs. Tr.10 at 53-54.

Mr. Marder of IERG testified that the likelihood of many appeals is low. Tr.10 at 100. Mr. Marder noted that IEPA has a statutory deadline to grant all CAAPP permits within 24 months of the first application – *i.e,*. March 1998. Mr. Marder stated that even if IEPA is late, there will still be plenty of time for the 120 days - the statutorily-required time in which permit appeals must be decided - to run before the

first ozone season. Tr.10 at 100-101. The number of appeals that will go to the appellate court, Mr. Marder predicted, will be few. *Id*.

In addition, Mr. Marder stated that if a source is required to "pay back" the ATUs it may have used during the ozone season that it may ultimately lose on appeal, there also should be a mechanism to ensure that a source is somehow compensated for any loss it may have incurred because it could not sell the disputed ATUs in the event that the source wins on appeal. Tr.10 at 101. The complexities that these mechanisms would involve led IERG to conclude that IEPA's original proposal offered the best solution. Tr.10 at 107. IERG reiterated Mr. Marder's concerns in a public comment. PC 20 at 6.

Others agree. The Coalition believes that a source should be able to use ATUs in dispute during the pendency of an appeal. PC 22 at 2. It argues that under the rule as originally proposed, sources have no incentive to inflate proposed baselines because they may not sell "extra" ATUs. Second, the Coalition argues that because appeals are costly and time consuming, the process itself deters frivolous appeals. Third, if the Board considers an appeal frivolous, it may dismiss the appeal. PC 22 at 2-3. JSC also supports the rule as originally proposed. PC 23 at 6.

IEPA responded to the Board's questions about whether to require sources to "pay back" disputed ATUs in certain cases in a public comment filed after the August 19, 1997 hearing. In that comment, IEPA proposed changes to the rule it had proposed. IEPA noted:

> As originally proposed, sources would be issued ATUs consistent with their proposed baseline. The Agency has realized that this approach may be somewhat problematic because sources may be able to bank ATUs during the appeal, potentially resulting in an unfair advantage after the prohibition on trading is lifted. Therefore, the Agency proposes that sources only be issued ATUs representing the undisputed portion of their proposed baseline, reduced by 12 percent when appropriate, but should be allowed to emit in excess of this amount, provided such emissions are not in excess of the source's proposed baseline level. This approach limits any potential inequities by only affording relief to the extent the source actually needs it to address its actual emissions. PC 27 at 1-2.

IEPA proposes the following changes to Section 205.315 to implement its recommendation, which the Board has slightly modified for consistency:

> 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 are~~is~~ appealed, the baseline emissions for the source shall be as proposed in the source's ERMS application during the pendency of~~during~~ 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 is not disputed in the appeal. ~~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). Such source shall be permitted to emit~~ If such source's seasonal VOM emissions exceed the ATUs it holds at the end of reconciliation periods during the pendency of the appeal, the source will not be deemed to have had an emissions excursion to the extent that such seasonal VOM emissions do not exceed the amount it proposed as its baseline in its ERMS application, less reductions required pursuant to Section 205.400(c) or (e) of this Part, if applicable. Such source shall not be allowed to sell ATUs during the pendency of the appeal.

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 [415 ILCS 5/40.2]. If the permit conditions establishing the Agency's BAT~~best available technology~~ determination are~~is~~ appealed, ATUs shall be allotted to the source for any emission unit for which the Agency's BAT ~~best available technology (BAT)~~ determination is being appealed with~~out~~ the emissions reduction ~~otherwise~~ required by Section 205.400(c) or (e) 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 these emission units are using BAT instead of two years after the issuance as set forth at Section 205.400(b).~~ If the seasonal VOM emissions for the subject emission unit(s) exceed the ATUs that are attributed to the unit(s) during the

> pendency of the appeal, the source will not be deemed to have an emissions excursion to the extent that such seasonal VOM emissions do not exceed the amount of ATUs that would be attributed to this unit if the BAT exclusion was accepted. Such source shall not be allowed to sell ATUs during the pendency of the appeal.

The Board finds IEPA's proposal acceptable and incorporates it into the rule. It prevents sources from banking and selling ATUs to which they may not be entitled, but relieves hardship on sources by allowing them to emit VOM up to their proposed baseline or BAT demonstration while an appeal is pending. The Board finds that IEPA's proposal roughly balances the interests of sources, IEPA, and the public. The proposal may even encourage sources and IEPA to work out their differences quickly without resort to the appellate process.

Section 205.320 Baseline Emissions

Section 305.320(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 there were "non-representative conditions" in 1994, 1995, or 1996. A new sentence in subsection (a)(2) directs IEPA to consider the production data the sources must provide in ERMS applications when proposing a replacement year(s). Section 205.320(a) now also provides examples of "non-representative conditions."

The participants raised issues regarding: (1) the definition of "non-representative;" (2) accounting for reductions made to comply with the NSR program; and (3) accounting for voluntary over-compliance. The Board has elected to (1) add a directive to IEPA to consider data in the ERMS application when determining whether conditions are "non-representative," and provides examples of "non-representative conditions;" (2) not allow reductions made to comply with the NSR program to be credited to a source's baseline, except in certain situations; and (3) establish October 31, 1990, as the date from which a baseline may be increased for voluntary over-compliance. The Board also has made clarifying changes to subsection (e)(3)(B).

Non-representative Conditions

Subsection (a) of this section 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 timeframe of 1990 through 1997, if there were non-representative conditions in 1994, 1995, or 1996. The Board has added two new sentences to subsection (a)(2) to address the concerns of several participants. The new language requires IEPA to consider the production data that a source is required to include in its ERMS application if it seeks to use a year other than 1994, 1995, or 1996 in calculating its baseline emissions. The subsection also now provides that "non-representative conditions" include, but are not limited to, events such as strikes, fires, floods, and market conditions. The Board has added similar language to subsection (c).

Two participants in particular expressed concerns about the meaning of non-representative conditions. They are the ALAMC and JSC. The ALAMC requests that the Board define the term "non-representative" as that term is used in Section 205.320(a). Tr.10 at 140, PC 30 at 2. Mr. Ron Burke of ALAMC suggested that a definition of "non-representative" would "help avoid disagreements that could delay implementation and that could limit the extent to which baselines exceed actual emissions." Tr.10 at 140. The ALAMC suggests that "non-representative" emissions could be those resulting from changes "not expected to occur more than once every twenty years." PC 30 at 2. Based on its position as described below, JSC would agree to such a definition. PC 23 at 5.

JSC also questions what constitutes a "representative year." It questions what makes the years between 1994 and 1996 "more representative" than a period four or five years ago. Using a cyclical business as an example, JSC asks which part of the cycle is "more representative," the bottom or the top of the cycle? Based upon its testimony, JSC is also concerned that depressed operation due to business conditions will not be considered a reason why the 1994-1996 seasons are non-representative. As an example, JSC explained that operations at one of its facilities has been cut back since 1992-1993. JSC is concerned that IEPA would not allow JSC to substitute those years in place of two years from 1994-1996. Ex. 62 at 11. The Coalition expressed similar concerns. PC 10 at 11-13.

The participants are correct that IEPA's testimony about what constitutes "non-representative" identified only catastrophic events. We agree that these conditions could justify replacement years. However, the participants' concern about the lack of a definition of "non-representative" is valid. Fortunately, examination of the rule proposed at first notice provides a more expanded version of what conditions could justify a replacement year. Section 205.310(b)(1)(B) provides that a source proposing a substitute baseline emission year as provided in Section 205.320(a)(2) must include in its ERMS application "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." Based upon the foregoing, a source can use production data to demonstrate, under Section 205.320(a)(2), that a year other than 1994, 1995, or 1996 is more representative of its seasonal VOM emissions.

To clarify that IEPA is to consider this type of justification when determining baseline emissions under Section 205.320, new language has been added which requires IEPA to do so. The new language also provides examples of "non-representative conditions." While these amendments are not a definition *per se*, they address the concerns raised by the Coalition, JSC, and the ALAMC. IEPA and the participants are reminded that this type of information is required in the ERMS application and, in turn, must be considered by IEPA when it determines the baseline emissions for a source seeking to substitute a year as more representative than 1994, 1995, or 1996.

Accounting for Reductions due to Compliance with the NSR Program

The Board at first notice requested that participants comment on whether a source's baseline should be increased due to achieved NSR offsets. ERMS (July 10, 1997), R97-13, slip op. at 18

IEPA asserts that a source cannot increase its baseline based on emission reductions that have been used under the current Part 203 in exchange for a construction permit authorizing a major new source or major modification. IEPA maintains that these emission reductions are "no longer surplus" because they are required by the construction permit. Exh. 74 at 2-3.

IEPA distinguishes emission reduction credits, which it describes as emission reductions that meet the requirements for emission offsets and could be used as offsets but have not been so used. IEPA states that a "source can argue that emission reduction credits that it has achieved do increase its baseline . . . because they will appear in the source's baseline emissions as voluntary over-compliance." Exh. 74 at 3.

IEPA adds that pursuant to Section 205.320(g) a source may have its baseline reflect emission reduction credits obtained from another source for use as offsets. Exh. 74 at 3. IEPA explained, however, that such emission reduction credits cannot be carried over into the ERMS if IEPA has relied on them in any formal attainment demonstration, including a reasonable further progress plan. Tr.10 at 37. IEPA describes this limitation as "a requirement for any emission reduction credit under the new source review program which we're proposing to repeat in part 205." Tr.10 at 37.

The Board finds IEPA's explanation satisfactory, but notes that it has revealed an apparent oversight in Section 205.320(g)(2). That provision states that for emission reduction credits obtained from another source to be used in a baseline, IEPA must not have relied on them "for attainment demonstration purposes." No mention is made of reasonable further progress. As referenced by IEPA, a similar provision in the Part 203

NSR regulations requires in part that emission offsets not have been previously relied on "for demonstrating attainment or reasonable further progress." 35 Ill. Adm. Code 203.303(b)(6) (emphasis added). Accordingly, the Board amends Section 205.302(g)(2) as follows:

> 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 to demonstrate ~~for~~ attainment or reasonable further progress ~~demonstration purposes~~.

Accounting for Voluntary Over-Compliance

Regarding the timing of voluntary over-compliance for purposes of increasing baselines pursuant to Section 205.320(d), the Coalition asserted at first notice that credit should be given for voluntary over-compliance achieved after the 1990 ozone season rather than after December 31, 1990, because the ERMS is based on the reduction of emissions of 1990's ozone season. As proposed by the Coalition, the Board amended Section 205.320(d) to provide that baseline emissions be increased for voluntary over-compliance that occurred after September 30, 1990. ERMS (July 10, 1997), R97-13, slip op. at 32. IERG supports this change to Section 205.320(d).

Since first notice, IEPA has explained why October 31, 1990, is the preferable starting date. The Board has revised Section 205.320(d) accordingly.

In public comment, IEPA clarifies that USEPA allows states to rely on annual emissions data collected for the inventory base year through the end of that calendar year, subsequently adjusted for that year's ozone season to reflect the ozone season weekday emissions. IEPA states that it followed this procedure in preparing the 1990 base year

inventory, using USEPA-designated ozone season for Illinois of April 1 - October 31. IEPA concludes that it would prefer setting the over-compliance date at October 31, 1990, to coincide with the referenced ozone season. Tr.10 at 65-66; PC 17 at 13. The ALAMC concurs with IEPA's suggestion to use October 31, 1990, as the over-compliance date. Tr.10 at 146.

In public comments filed after first notice, the Coalition maintains its position that the 1990 over-compliance date should be September 30 to be consistent with the ERMS designated ozone season. PC 22 at 1-2. The Coalition argues that September 30, 1990, is more appropriate than October 31, 1990, because IEPA selected September 30 as the end of the Chicago area ozone season based on its own research regarding the frequency of ozone exceedences relative to the days of the year. *Id*.

In response to these public comments of the Coalition, IEPA asserts that the Coalition "is missing the distinction between the ozone season for purposes of the base year inventory and for the ERMS." PC 35 at 4. IEPA states that "the 1990 base year inventory was based on emissions for an ozone season day" and because that season extended through October, "reductions made in October may be reflected in the inventory." *Id.*

In its post-first notice public comment, JSC states that the focus should not be on the specific date in 1990 when the reduction was achieved, but rather on "whether IEPA included the reduction in calculating the baseline." PC 23 at 5. Accordingly, JSC proposed language to implement its suggestion. PC 23 at 6.

IEPA opposes JSC's suggested language and asserts that the presently proposed rule "assures that all sources will be considered equitably and a source for which inaccurate information was included in the base year inventory, for whatever reason, will neither be penalized nor rewarded as a result of this error." PC 35 at 4.

The Board agrees with IEPA and the ALAMC that the over-compliance date in Section 205.320(d) should be October 31, 1990. As described above, IEPA has explained that it calculated the 1990 base year emissions inventory by adjusting for USEPA designated ozone season of April 1-October 31, 1990, to reflect ozone season weekday emissions. IEPA testified that it is concerned that using September 30, 1990, for the over-compliance date may result in increasing ERMS baselines based on reductions that occurred in October 1990 even though those reductions are already reflected in the 1990 base year inventory. Tr.10 at 64-66; PC 35 at 4. IEPA also testified that using the October 31, 1990 date would not significantly affect reductions expected from ERMS. Tr.10 at 65.

Accordingly, the Board changes Section 205.320(d) as follows:

d) The baseline emissions of any participating source shall be increased for voluntary over-compliance that occurred after October 31 ~~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. . . . .

Section 205.400 Seasonal Emissions Allotments

This section identifies the criteria for establishing the allotment of ATUs for all participating sources. The participants in the rulemaking discussed (1) whether ATUs are "property rights;" and (2) whether ATUs should be permanent. The Board concludes (1) that ATUs are not "property rights," and adds language to clarify that point; and (2) that ATUs should not be permanent.

ATUs as Property Rights

Mr. Trepanier, of the Blue Island Greens, and Mr. Burke, of the ALAMC, both raised a concern that the ERMS may create property rights in air pollution. Tr.10 at 117-118, 132, 144-145. Mr. Trepanier testified that in doing so, the ERMS is not consistent with Section 9.8 of the Act, which he interprets as allowing only the sale of emissions reductions rather than pollution rights. Tr.10 at 118-119. He also testified that the rule would unfairly grant foreign corporations air rights in Illinois. Tr.10 at 120.

Mr. Burke stated that the ERMS raised some legal issues by granting sources ownership over air pollution rights. Tr.10 at 144. He did not specifically identify those legal issues.

The Board does not agree that the ERMS creates property rights in ATUs. No language in the Act suggests that an ATU is a property right, and the proposed rules contemplate that allotments may be changed if "the Agency makes a demonstration to the Board, in accordance with the rulemaking provisions of Sections 9.8, 27 and 28 of the Act [415 ILCS 5/9.8, 27 and 28], that further reductions are needed." 35 Ill. Adm. 205.400(d).[4] This language clearly indicates that no source has any property right in the ATUs.

[4] This provision has been re-arranged to make it clear that it is the demonstration that must be made under Sections 9.8, 27 and 28 of the Act. The need for further reductions will be grounded in federal law and USEPA regulations; Sections 9.8, 27, and 28 merely set forth the standards and procedures that IEPA must follow in proposing that the Board adopt further reductions.

To remove any doubt as to the status of ATUs, however, the Board has added the following language to Section 205.400(d):

> An allotment or a baseline under this Part does not constitute a property right. Nothing in this Part shall be construed to limit the authority of the Board to terminate or limit such allotment or baseline pursuant to its rulemaking authority under Sections 9.8, 27 and 28 of the Act [415 ILCS 5/9.8, 27 and 28].

This provision is analogous to a provision in Title IV of the federal Clean Air Act, which establishes the sulfur dioxide allowance trading program for utilities. See 42 U.S.C. § 7651b(f) (1996). This provision precludes any claim that a change in the level of allotments or a baseline is a "taking" of property for which compensation is required under the U.S. and Illinois constitutions. *Cf.* United States v. Fuller, 409 U.S. 488, 489, 494 (1973) (a permit issued under the Taylor Grazing Act did not constitute property under the Takings Clause of the U.S. Constitution because that statute stated that the permit "shall not create any right, title, interest, or estate in or to the lands").

The Board recognizes that the vitality of the ERMS will be undermined if the level of allotments is changed capriciously. However, the requirement that such changes be made only through the Board's rulemaking procedures and consistently with the requirements of Section 9.8 ensures that such changes will be made for good cause. In particular, given that ATUs have a life of two years once issued, the Board would be very concerned about any reduction of ATUs that have already been issued, as such a reduction could seriously interfere with sources' existing compliance plans. This issue and other issues of concern could be thoroughly discussed in the additional rulemaking proceedings required by Section 205.400.

The Board also disagrees with Mr. Trepanier's assertion that the ERMS is inconsistent with Section 9.8 on the grounds that it creates a market in "pollution rights" rather than "emissions reductions." The ERMS requires participating sources to decrease their emissions by 12%, and enforces that requirement by issuing to each source ATUs equal to only 88% of its baseline emissions. Sources may sell ATUs equivalent to any reductions beyond that required 12% decrease. Sources therefore will have ATUs to sell only if they reduce their emissions below their allotted ATUs. In effect, therefore, the market that the ERMS creates is a market based on emission reductions. The ATUs are merely an accounting device, and the fact that IEPA has chosen to issue ATUs for a source's baseline, rather than only for reductions below a source's baseline (as Mr. Trepanier suggests), does not change the fact that a market will exist only if there are unused ATUs, which generally result only from reductions. The Board therefore finds that the ERMS is consistent with Section 9.8 of the Act.

The Term of ATUs

Under Section 205.400(b) of the proposed rule, ATUs have a term of two years. In its initial public comment, Tenneco asserted that ATUs should be permanent, as are allotments in the federal SO_2 trading program for utilities. At first notice, the Board found that changing Section 205.400(b) to make ATUs permanent was not warranted on the record before it, but invited comments concerning this issue. USEPA addressed this subject in its public comment, and IEPA submitted testimony on this topic at the August 19 hearing.

USEPA urges the Board to reject Tenneco's request, stating:

> Giving allotment trading units permanent life would allow businesses to hoard allotment trading units, distorting the market and potentially leading to big spikes in emissions levels in later years. Consequently, such a change could jeopardize USEPA approval of the trading rule as a component of the State's plan for achieving 9% reductions by 1999 and jeopardize the State's ability to meet the ozone air quality standard. PC 19 at 2.

USEPA distinguishes the proposed ERMS from the federal SO_2 trading program on the basis that the federal program is designed to address long term cumulative ecological damage, whereas the ERMS is designed to address ambient levels of ozone on particular days in Chicago, which present an immediate threat to health. *Id*.

IEPA also opposes making ATUs permanent. Mr. Roger Kanerva of IEPA testified that SO_2 and ozone present fundamentally different types of environmental problems requiring different approaches. Exh. 75 at 1. Mr. Kanerva identified three significant differences between the federal acid rain program and the Chicago ERMS. First, ozone standards are based on short term exceedences and rapidly varying ozone concentrations, as opposed to slowly varying levels of acidity in rainwater, lakes and streams over a period of years. Accordingly, while year to year fluctuations in SO_2 emissions caused by banking would not have a significant impact on achieving the ultimate goal of the acid rain program, one day's high emissions of ozone precursors cannot be offset by a previous year's lower emissions. Exh. 75 at 2, 3; Tr.10 at 24. Second, the CAA requires Illinois to meet specific ROP requirements based on annual incremental reductions in emission of ozone precursors. The acid rain program does not have ROP requirements, so use of banked ATUs does not present a danger of violating ROP levels. Exh. 75 at 3; Tr.10 at 24. Finally, ozone precursors have a very short term impact on ozone levels, whereas acid rain precursor emissions can have a multi-year effect. Consequently, reductions in SO_2 emissions in one year can have an effect in future years, which is not true for ozone precursors. Exh. 75 at 3; Tr.10 at 24-25. IEPA also suggests that having ATUs of finite duration will encourage trading and still allow for limited banking. Exh. 75 at 3-4; Tr.10 at 26.

The Board finds that no change in the duration of ATUs under Section 205.400(b) of the proposed rule is warranted. The Board also notes that under Section 205.400(b) as originally proposed, ATUs issued pursuant to Sections 205.315(a) and (c), 205.500, and 205.510 are not subject to Section 205.400(b)'s two-season limit on validity. While Section 205.500 imposes limits on the duration of ATUs issued pursuant to its provisions, Section 205.510 contains no such limits, leaving open the possibility of issuance of ATUs pursuant to Section 205.510 with unlimited life. For the reasons set forth above, the Board finds that this is inappropriate. Accordingly, subsection 205.510(d) has been modified by adding the following sentence at the end of the subsection:

> Such ATUs shall only be valid for the seasonal allotment period in which the emission reductions were achieved, unless the Agency specifies in its approval that such ATUs shall be valid for the seasonal allotment period following issuance and for the next seasonal allotment period.

In addition, because of changes to Section 205.315 discussed above at pages 22 - 25, the exemption of ATUs issued under subsections 205.315(a) and (c) is no longer necessary. The Board has deleted the reference to those subsections in Section 200.400(b). The Board also has made minor changes to Sections 205.337(b)(3) and 205.400(g) for consistency.

Section 205.405 Exclusions from Further Reductions

This section establishes exclusions from the 12% reduction requirement for emission units that comply with various emission standards. The participants in the rulemaking discussed five issues regarding this rule. First, they discussed how emissions units may comply with Maximum Achievable Control Technology (MACT) standards to come within the exclusion from the 12% reduction requirement. As explained below, the Board concludes that compliance with MACT will be determined under the relevant MACT standard.

Second, the participants discussed whether an emission unit that meets a MACT or NESHAP standard promulgated after 1999 should be excluded from the requirement to reduce emissions by 12%. The Board concludes that such units should not be excluded from this requirement.

Third, the participants discussed this section's exclusion from the VOM reduction requirements for units that meet LAER. The Board finds this exclusion appropriate.

Fourth, the participants discussed whether there should be an annual emissions limit on federal hazardous air pollutants or state toxic air contaminants. The Board finds that, at this point, there should not be such a limit.

Fifth, the participants discussed whether the definition of BAT should be modified. The Board finds that the definition should be modified in accordance with IEPA's suggestions. These five issues are discussed in turn below.

How Emission Units May Comply with MACT

At first notice, the Board requested comment to clarify how emission units may comply with MACT standards to come within the Section 205.405(a)(1) exclusion from the 12% reduction. ERMS (July 10, 1997), R97-13, slip op. at 41.

Tenneco states that USEPA promulgates MACT by source category and that, after promulgation, all emission units that USEPA reviewed in that category are subject to MACT, meaning that all such "emission units must implement MACT whether MACT is specific controls or no controls." Exh. 77 at 5-6. Tenneco argues that if "USEPA determines that MACT for an emission unit is no controls or USEPA otherwise declines to require controls for an emission unit evaluated in its MACT process, the ERMS rules should recognize that the facility is implementing MACT for that unit." Exh. 77 at 8. In addition, Tenneco argues that Section 9.8(c)(4) of the Act requires that the ERMS rules provide that all emission units that comply with MACT, even if MACT is no controls, should be excluded from further reductions of VOM emissions under ERMS. Exh. 77 at 6-7. Tenneco concludes that Section 205.405(a)(1) as written is consistent with its position and, accordingly, requests no language change. Exh. 77 at 3-4, 6.

IERG states that "[w]hether an emission unit has achieved MACT should be determined based on the criteria in the governing MACT rule" and that the "methods of achieving MACT vary depending on the specific underlying rule." Exh. 76 at 11. IERG provides four examples of how MACT may be achieved (application of control technology; implementation of particular work practices or operating methods; presence of particular physical features of an emission unit; or use of certain raw materials) and concludes that MACT may be achieved by methods other than control devices. IERG states that if "the unit has met the requirements of MACT, by any allowed means, this unit would be excluded from the 12% reductions . . . ." Exh. 76 at 11 (emphasis in original).

IEPA states that the Section 205.405(a)(1) MACT exclusion applies to emission units that are "subject to and complying with" MACT. PC 17 at 17. Like IERG, IEPA recognizes that MACT offers "different compliance alternatives such as add-on control equipment, work practice requirements, physical features of the emission unit, or use of certain raw materials." PC 17 at 17. IEPA concludes that compliance "by any of the means or alternatives set forth in the relevant MACT" is sufficient to qualify for the exclusion from the 12% reduction, but that an emission unit not subject to MACT "based on an applicability threshold . . . would not qualify for the exclusion from reduction." PC 17 at 17.

IEPA also states that the exclusion provided by Section 205.405(a)(1) applies to emission units, not to an entire facility. IEPA argues that it does not follow that USEPA's promulgation of MACT for a source category would bring all emission units at a facility within Section 205.405(a)(1) just because that facility had an emission unit subject to and in compliance with the MACT standard. IEPA states that any such interpretation would jeopardize the State's ability to meet the ROP. PC 17 at 16.

The Board finds that for an emission unit[5] to be able to come within the Section 205.405(a)(1) MACT exclusion, the emission unit must be subject to and in compliance with a MACT standard. Whether the emission unit is subject to and in compliance with a MACT standard is to be determined by the applicability and compliance criteria, respectively, of the given MACT standard. In addition, the Board agrees with IEPA that only emission units may come within Section 205.405(a)(1).

Exclusion of Emission Units Meeting MACT or NESHAP Standards Promulgated After 1999

In response to Tenneco's comments, the Board at first notice amended Section 205.405(a) so that an emission unit that meets a MACT or NESHAP standard promulgated after 1999 would be excluded from the 12% reduction. ERMS (July 10, 1997), R97-13, slip op. at 33.

IEPA opposes this change, asserting that it is beyond the scope of Section 9.8(c)(4) of the Act and may jeopardize the State's ability to meet ROP milestones. PC 17 at 13-16. Section 9.8(c)(4) requires that the ERMS rules include provisions that:

> Assure that credit is given or exclusion 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. 415 ILCS 5/9.8(c)(4) (1996).

IEPA argues that this provision does not address "emissions reductions from MACT or a NESHAP which occur after the initiation of the program, *i.e.*, after 1999." PC 17 at 14. IEPA adds that under the ERMS rule as proposed by IEPA, "reductions made by sources after 1999 to comply with MACT or a NESHAP would be, in essence, voluntary for purposes of ERMS and such sources may use reductions

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[5] The Board notes that the definition of "emission unit" in Part 211, which is incorporated by reference into the ERMS rule, includes "any part or activity at a stationary source that emits or has the potential to emit any air pollutant." 35 Ill. Adm. Code 211.1950. The Board therefore has stricken as redundant all references to "activities" in the phrase "emissions units or activities" wherever used in the ERMS rule. Similarly, the Board has stricken the word "process" where appropriate.

achieved to meet their obligation under the ERMS or may bank or trade." PC 17 at 14.

IEPA also argues that the change made by the Board at first notice may jeopardize the State's fulfillment of ROP. IEPA states that emissions reductions required by ERMS will not be creditable toward Illinois' ROP plan if this level of reduction is lessened in future years because a source's baseline emissions and allotments increase after 1999 by meeting new MACT or NESHAP standards. PC 17 at 13-14. IEPA adds that MACT regulations expected after 1999 may encompass as much as two thirds of all ERMS sources without exacting significant VOM reductions. IEPA concludes that "most of the 12% emission reductions achieved initially by the program will be returned to the sources," which "would likely be considered backsliding by USEPA." PC 17 at 15-16.

ALAMC also opposes the change made at first notice for similar reasons. Tr.10 at 141. ALAMC adds that because Section 9.8(c)(4) of the Act allows exclusion or credit to be granted for emission units that meet MACT or NESHAPs, credit should be provided by adjusting the baselines of sources rather than providing exclusion. Tr.10 at 142, PC 30 at 3.

In its public comment filed on September 8, 1997, USEPA urges that the final rule "provide no adjustments of allotments when future MACT standards are promulgated." PC 29 at 2. Like IEPA and ALAMC, USEPA argues that the revision made at first notice would jeopardize Illinois' ability to meet the 9% ROP. It notes that because it is unclear what MACT standards will be adopted in the future and what impact they will have on Chicago area industry, it cannot predict what reductions, if any, would result from compliance with such new standards or "what the magnitude of the foregone 12 percent reductions might be." PC 29 at 1.

In addition, USEPA argues that the amendment is unnecessary because if "a future MACT rulemaking in fact signifies that existing control reflects best available control for VOC, the source has already had the option to seek the relief" from the 12% reduction by demonstrating BAT under Section 205.405(b). PC 29 at 1-2. USEPA also expresses concern that because of the revisions made at first notice, the language of Section 205.405(a) can be interpreted in different ways. PC 29 at 2.

JSC states that it shares IEPA's concern about the MACT exclusion as proposed and, as an alternative, suggests that an emission unit would qualify for the MACT exclusion if:

> (1) the standard is adopted prior to [the] end of the 1999 seasonal allotment period (even though compliance may not be required until three years later), and (2) the unit achieves compliance with the standard before the end of the same allotment period, thereby awarding a source for achieving early compliance with the standard. PC 23 at 6-7.

In response to JSC's comments, IEPA asserts that allowing a unit to come within the exclusion through compliance with MACT by as late as the end of the 1999 seasonal allotment period (*i.e.*, September 30, 1999) is inconsistent with the goal of achieving emissions reductions during the 1999 seasonal allotment period (*i.e.*, May 1-September 30, 1999) to meet the ROP requirement for 1999. PC 35 at 5. IEPA adds that it "would, however, agree to consider emission units for exclusion if the unit complies with MACT before May 1, 1999." *Id.*

The Board agrees that allowing for exclusion from the 12% reduction by meeting a MACT or NESHAP standard promulgated after 1999 is not required by Section 9.8(c)(4) of the Act and could jeopardize the State's ability to meet ROP requirements. The Board, however, finds that neither the ALAMC nor JSC provided sufficient reasons for their respective proposed changes. In addition, IEPA raises a valid concern about Illinois' ability to meet the 9% ROP target if JSC's language is adopted.

As discussed above, the language originally proposed by IEPA on this issue was removed at first notice. This language, which stated that the emission unit had to be "in operation prior to 1999," suggested that the emission unit must comply with MACT or one of the other requirements before January 1, 1999. IEPA, however, now indicates that it would be amenable to allowing an emission unit to come within the exclusion if it met MACT prior to May 1, 1999, the start of the first seasonal allotment period. This is consistent with Section 9.8(c)(4) of the Act in that May 1, 1999, should be considered "the initiation of the program." 415 ILCS 5/9.8(c)(4) (1996).

Moreover, such MACT compliance would show that any resulting emissions reductions were occurring during the 1999 seasonal allotment period, which is consistent with the goal of meeting the 9% ROP target as described by IEPA. There is no reason, however, that this rationale would apply only to the MACT exclusion and not to the other exclusions, for example, NESHAP, LAER, and BAT. Accordingly, set forth below are the Board's amendments to Section 205.405(a) and (b):

a) VOM emissions from the following emission units ~~or activities~~, if satisfying Section 205.405(a)(1), (2) or (3) prior to May 1, 1999, shall be excluded from the VOM emissions reductions requirement specified in Section 205.400(c) and (e) of this Subpart as long as such emission units continue to satisfy Section 205.405(a)(1), (2) or (3):

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, prior to May 1, 1999, BAT ~~the best available technology~~ for controlling VOM emissions, VOM emissions from such emission unit~~s~~ shall not be subject to the VOM emissions reductions requirement specified in Section 205.400(c) or (e) of this Subpart as long as such emission unit continues to use such BAT. 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 BAT ~~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 BAT ~~the best available technology~~.

Subsection (c) of Section 205.405 also has been amended to expressly cross-reference subsections (a) and (b).

Exclusion for Emission Units that Meet LAER

ALAMC is concerned about Section 205.405's exclusion from the VOM reduction requirements for units that meet LAER. Mr. Burke testified, "The concern again is that while the rate may be set, production could increase, and therefore, total emissions could increase thereby defeating the overall purpose of this plan . . . ." Tr.10 at 141.

ALAMC states that "IEPA has informed us that, because sources granted exclusions will still be given ATUs, their seasonal emissions will effectively be capped, although these sources will not be subject to emissions reductions requirements of Section 205.400(c) and (e). This could satisfactorily address our concern . . . However, the proposed rule does not appear to clearly require this approach. Section 205.405 excludes sources from sections 205.400(c) and (e) which not only specify the reduction requirements but also the requirement that participating sources be given initial allotments based on baseline emissions. As a result, excluding sources from these subsections might also exclude them from the initial allotment that IEPA suggests would act as an emissions cap." PC 30 at 3. ALAMC suggests that the Board add language to Section 205.400 "that clearly establishes an initial ATU allotment for exempted sources equal to baseline emissions." *Id.*

The Board does not agree with ALAMC's reading of this regulation. Section 205.405 expressly states that VOM emissions from certain units, including those that meet LAER, "shall be excluded from the VOM emissions reductions requirement in Section 205.400(c) and (e) of this Subpart . . . ." Section 205.405 does not exclude such units from the portions of Sections 205.400(c) and (e) that provide for allotments to sources based on the baseline emissions for such source. Baselines will include emissions from LAER units, so Section 205.400 already establishes an ATU allotment for units excluded from further reduction requirements.

Annual Emissions Cap for Hazardous Air Pollutants and Toxic Air Contaminants

Mr. Burke of ALAMC urged the Board to "establish an annual emissions cap for participating sources based on actual historic emissions for HAPs [hazardous air pollutants] and state toxic air contaminants (TACs) until such time as MACT or NESHAP are met." Tr.10 at 137. The Act provides that the Board is to give credit for, or exclude, units that meet either of these standards. 415 ILCS 5/9.8(c)(4) (1996).

Mr. Burke testified that an annual limit on a source's HAP and TAC emissions is needed to prevent the "toxic hot spots" that otherwise could arise from two features of the ERMS. First, because the ERMS does not distinguish between toxic and non-toxic VOMs, there is a risk that "a source could purchase ATUs generated from non-toxic VOM emissions to either avoid decreasing or to actually increase toxic VOM emissions," at least before MACT standards are promulgated. Tr.10 at 136. Second, the ERMS creates the potential for "off-season [*i.e.*, off-ozone season] increases in

toxic VOM emissions." Tr.10 at 136. Mr. Burke also urged that the Board require sources to provide "information on toxic VOMs (both federally- and Illinois-designated)" in seasonal emissions reports, the ERMS application, and the compliance audit file. PC 30 at 1.

At the August 19, 1997 hearing, Mr. Kanerva of IEPA asked Mr. Burke about "utilizing the information from the first year or two of a report to start to give us a real empirical basis to judge whether or not unusual patterns would develop with HAP emissions and then work out some sort of possible regulatory action to address that HAP." Tr.10 at 149. Mr. Burke replied, "we think it's appropriate to take steps to actually prevent the problem from happening in the first place." *Id*.

Amoco filed a public comment opposing an annual emissions cap on HAPs and TACs. PC 28 at 2. Amoco stated:

> Most facilities expected to be subjected to ERMS face a variety of controls on emissions. These include U.S. and Illinois limits on VOM and TAC/HAP (LAER, [Reasonably Available Control Technology], [New Source Performance Standards], NESHAP, MACT, etc.). Each of these rules is enforceable independent of ERMS, and the imposition of ERMS on a source will not relieve the source of its obligation to comply with any existing obligations. . . . Therefore, it is erroneous to conclude that ERMS will result in an increase in the probability of localized ''toxic hot spots.'' In fact, since ERMS imposes an overall requirement for 12% VOM emission reduction, it is almost certain that there will be a decrease in TAC/HAP emissions. *Id*.

IERG also opposes an annual emissions cap on HAPs and TACs. IERG cites the following testimony of Mr. Philip O'Connor of Coopers & Lybrand at the January 21, 1997 hearing:

> The reason that [toxic hot spots are] unlikely to occur is that most emitters of these products today are already licensed to emit at some certain level and that level was associated in some reasonable way with its capacity to produce the product that it's interested in producing. In most cases, you really are not in a position to go out and acquire these large number of allowances and somehow change your operation as such to produce that much more of the product resulting in some widely or dramatic increase in emissions. I think that the economics actually argue against the expectation that there [will be] this highly localized, very adverse effect. PC 20 at 9, quoting Transcript of January 21, 1997, at 219-221.

IERG reaffirms Mr. O'Connor's testimony, and suggests that it would be appropriate for the Board to revisit the issue after the ERMS has been in operation. PC 20 at 9.

The Board finds that the record does not support an annual emissions cap for HAPs and TACs. As Amoco notes, many of these sources are or will be regulated under other regulations that will limit their emissions of HAPs and TACs apart from the ERMS. Even if they were not, Mr. Burke himself admitted that "there's clearly a limit on the potential [for toxic hot spots] given the declining cap on total VOM emissions. . . ." Tr.10 at 136. As Mr. O'Connor pointed out, the economics of production also make it unlikely that sources will dramatically increase their emissions of HAPs and TACs. The Board therefore declines to impose an annual emissions cap for HAPs and TACs at this time. In addition, the Board finds that the additional reporting requirements that ALAMC requests would be better considered in the rulemaking to develop TAC regulations under Section 9.5 of the Act. At that time, the Board could consider existing reporting requirements under other programs and avoid duplication.

Definition of BAT

Several participants requested that the Board provide a more detailed definition of BAT.

ALAMC's Suggested Language. Mr. Burke of ALAMC suggests that BAT is the "maximum degree of VOM reduction as being at least as pronounced [as] the greatest level of reductions for comparable units." Tr.10 at 140. Although it is not currently specified in the definition of BAT nor in Section 205.405 exclusions, the ALAMC contends that IEPA's testimony suggests that the standard being proposed by ALAMC would be used in reviewing requests for the BAT exclusion. PC 30 at 3.

The Board finds that the change suggested by the ALAMC to clarify the definition of BAT does not reflect the proposed intent of the rules. By defining BAT in terms of VOM reduction as being at least as pronounced as the greatest level of reduction for comparable units, the rules would be requiring emission units seeking BAT determinations to achieve reductions as stringent as LAER or MACT in certain cases. In this regard, the Board notes that the BAT for an emission unit is not intended to be more stringent than the BACT for such unit as determined contemporaneously under the PSD program. PC 35 at 9. In light of this, the Board declines to make the changes suggested by the ALAMC. However, the Board notes that it has made a clarifying change to the definition of BAT, as suggested by IEPA (PC 35 at 14), to reflect that BAT for an emission unit shall not be more stringent than BACT for such a unit as determined contemporaneously under the PSD program. (See discussion below.)

Tenneco's Request for an Upper Numerical Limit. Tenneco requested that the Board define BAT by adopting an upper numerical emission reduction limit on BAT determinations for the purposes of Section 205.405. PC 7 at 2. In this regard, Tenneco suggested 95% capture and control as a reasonable emission reduction limit for defining BAT. In adopting the ERMS proposal for first notice, the Board declined to accept

Tenneco's suggestion due to lack of any technical justification in support of the numerical standard for BAT. ERMS (July 10, 1997), R97-13, slip op. at 40. However, the Board noted that the participants could present justification for a numerical limit for BAT during first notice for future consideration of the Board. Tenneco and IEPA addressed numerical limits for BAT in their testimony and post-hearing comments.

Tenneco states that the Board's definition of BAT does not set an upper boundary on how stringent BAT can be. Exh. 77 at 11. Tenneco contends that if an upper boundary is not specified in the rules, IEPA will have unfettered discretion in making BAT determinations. Further, Tenneco asserts that in some cases, allowing IEPA to make BAT determinations without an upper boundary may lead to determinations that are inconsistent with other provisions of the ERMS such as the MACT exclusion. Exh. 77 at 11.

Tenneco states that the Board's finding that the numerical limit was not technically justified misperceives the proposed intent. Exh. 77 at 13. Tenneco notes that it is not asking the Board to decide that a 95% capture and control system meets a clearly defined standard; rather, it is asking the Board to set a upper limit that clearly defines what BAT means for the regulated community. Exh. 77 at 13. Tenneco argues that the proposed upper limit serves the same purpose as the New Source Performance Standards, which set the lower limit on the definition of BAT. In this regard, Tenneco notes that IEPA has not provided any technical justification to support the lower limit. Exh. 77 at 13-14.

Tenneco believes that 95% capture and control is a reasonable upper limit for BAT. In this regard, Tenneco cites a number of federal MACT standards which require capture and control level of 95%. Tenneco notes that even the most stringent state VOM controls rarely require capture and control levels above 95%. Exh. 77 at 12. In view of this, Tenneco urges the Board to amend the ERMS rules to provide that emission units which capture and control 95% of VOM meet BAT.

Tenneco reiterates its concern regarding the proposed definition of BAT in its post-hearing comments. Tenneco states that an upper limit should be set for BAT because determining BAT will be very expensive. In this regard, Tenneco notes that a BAT determination is likely to resemble a BACT determination and will be expensive to perform since it will be done on a case-by case basis, taking into account a variety of impacts. PC. 25 at 7. In addition, Tenneco contends that without an upper limit, the implementation of BAT will also be very expensive. Tenneco asserts that by adopting the current definition, the Board has failed to place any limit on the technology or expense which IEPA can require of sources. PC. 25 at 9.

Zenith Electronics Corporation (Zenith) and Henri Studio, Inc. (Henri Studio) support Tenneco's request for an upper numerical emission reduction limit. PC 24 at 3. They note that the request to exclude units that achieve 95% VOM reduction from further reductions clarifies IEPA's intent that a LAER standard will not be imposed upon sources that seek BAT determinations. *Id*. Alternatively, like Tenneco, Zenith and Henri Studio

suggest that the Board place a limitation on BAT based upon cost. They recommend the same dollar amount suggested by Tenneco, *i.e*. $10,000 per ton of emission reduction, as the upper limit.

Zenith and Henri Studio contend that without further clarification of the definition of BAT, a source subject to ERMS may be regulated twice. They argue that sources which may have taken production limits to avoid NSR requirements (LAER and offsets) would be subject to a 12% VOM reduction or BAT determination that may be equivalent to LAER. *Id*. Zenith and Henri Studio suggest amendments to the ERMS rules that are similar to those proposed by Tenneco.

Dart Container Corporation (Dart) also agrees with Tenneco's position that the proposed definition of BAT gives IEPA entirely unfettered discretion in determining whether a source meets BAT. PC 32 at 4. Regarding the standard for the Board's review of IEPA BAT determinations, Dart contends that since IEPA is unwilling to set an upper limit on BAT, the burden of proof should shift to IEPA to prove that the source does not meet the BAT standard in a given situation. PC 32 at 5. By contrast, JSC concurs with IEPA that BAT must be determined upon a case-by-case evaluation. PC 23 at 3.

IEPA opposes the amendment of the BAT provisions to include a particular level of capture and control to define BAT. Exh. 74 at 12 and Tr.10 at 19. IEPA states that Tenneco's suggestion that 95% capture and control of VOM be deemed BAT is not appropriate. In this regard, IEPA notes that the capture and control efficiency for many emission units exceed 95%. IEPA notes that under the Board regulations, the standards for VOM control devices range from 60% to 98%. Exh. 74 at 13. IEPA also believes that specifying a particular level of control as BAT may preclude sources from pursuing BAT determinations for emission units with lesser control, or may allow sources to designate emission units as BAT in cases in which individual scrutiny would show otherwise. IEPA asserts that the different natures and potentially unique circumstances of emission units require that they be considered individually. PC 27 at 7.

Further, IEPA argues that the proposed definition of BAT is consistent with the definitions of BACT and MACT. IEPA states that like BAT, the definitions of BACT and MACT include provisions that set forth the minimum level of emission control necessary to constitute BACT or MACT. *Id*. Further, IEPA notes that like BAT, the definitions of BACT and MACT do not include provisions that specify a pre-determined maximum level of control that is deemed to constitute BACT or MACT. IEPA contends that for both BACT and MACT, the regulatory authority is charged to determine the level of control. PC 27 at 8.

Regarding Tenneco's concern that the proposed rules allow IEPA too much discretion in making BAT determinations, IEPA notes that it is already administering BACT on a case-by-case basis and it will be administering MACT beginning in July 1998. PC 27 at 8. Further, IEPA notes that the BAT provisions under ERMS are based on BACT and, as such, they incorporate USEPA's Top-Down BACT methodology. In view

of this, IEPA contends that reliance on this methodology will provide certainty in BAT determinations. PC 35 at 9. In addition, IEPA states that the sources will be able to petition the Board for review if they are not satisfied with IEPA determinations concerning BAT. Finally, IEPA notes that BAT is not a mandatory element of ERMS, but an optional provision. IEPA notes that there is no requirement in the ERMS that a particular unit achieve BAT. PC 35 at 6.

The Board declines to accept the changes suggested by Tenneco, Zenith, and Henri Studio to specify an upper boundary on BAT. The Board finds that the BAT determinations must be made case-by-case based upon technical feasibility and consideration of energy, environmental, and cost impacts. The Board agrees with IEPA that it is inappropriate to apply a pre-determined level as BAT for a variety of emission units at participating sources. Considering that it is possible to achieve control efficiencies beyond 95%, the Board agrees with IEPA that setting the upper limit at 95% would result in level of reductions that would be significantly lower in certain cases.

The Board disagrees with Tenneco that the proposed definition of BAT gives IEPA unfettered discretion in BAT decisions. Given that the BAT definition reflects USEPA's Top-Down BACT methodology, the Board believes that sufficient guidance will be available to provide certainty in BAT determinations. To clarify this point, the Board has revised the definition of BAT so that it now provides that BAT for an emission unit may not be more stringent than BACT for such unit as determined contemporaneously under the PSD program. Further, the Board notes that a source may appeal IEPA's BAT determination.

The Board recognizes that sources will incur some cost to make a BAT demonstration, as Tenneco argues. However, such costs must be weighed against the potential benefit to the source, *i.e*. obtaining an exclusion from reduction requirements of the ERMS. In this regard, the Board notes that Tenneco has not provided any cost figures to show that the cost of preparing a BAT demonstration would be unreasonable.

Tenneco's Request that BACT be an Upper Boundary on BAT. In lieu of a numerical limit for BAT, Tenneco suggests that the Board set BACT as the upper boundary on BAT. In this regard, Tenneco notes that IEPA's testimony supports setting an upper limit on BAT at BACT. The Coalition had recommended a similar change at first notice.

At first notice, the Board noted that the changes suggested by the Coalition had potential merit and asked the participants to address the BAT/BACT issue at hearing. Specifically, the Board directed the participants to comment on adding a new subsection (a)(4) under Section 205.405(a) that would exclude emission units that will or have achieved BACT. ERMS (July 10, 1997), R97-13 at 42.

In response, IEPA states that it is opposed to an exclusion based on the achievement of BACT. Exh. 74 at 14. The ALAMC concurs with IEPA's position. PC 30 at 3. The Coalition did not address this issue at hearing or in its post-hearing

comments. However, the Coalition's suggestion concerning BAT has been proposed by Tenneco, as one of the alternatives, to address its concerns relating to the definition of BAT. PC 25 at 16.

IEPA states that, in general terms, BAT is intended to be less stringent than BACT. Exh. 74 at 14 and Tr.10 at 21. However, IEPA points out that results of BAT determinations may not be less stringent than any historical BACT determination. In this regard, IEPA notes that BACT determinations have been made for emission units in attainment areas under the PSD program for almost 20 years by USEPA and individual states. Thus, IEPA believes that without appropriate qualifications, an exclusion tied to BACT would not provide an assurance that a high level of VOM control is being achieved to warrant an exclusion from 12% reduction under the ERMS. Exh. 74 at 15-16. Further, IEPA notes that it was unable to articulate the appropriate qualifications that could be used in a regulatory context. Tr.10 at 46.

However, IEPA suggests the addition of the following provision to the definition of BAT at Section 205.130 to confirm that BAT will not be more stringent than BACT as would be determined under the PSD program: "Best Available Technology for an emission unit shall not be more stringent than Best Available Control Technology as would be determined for such unit under the federal rules for Prevention of Significant Deterioration of Air Quality (PSD), 40 CFR § 52.21 (1996)." PC 35 at 9.

Based on the clarifications provided by IEPA concerning the relationship between BAT and BACT, the Board declines to make the changes suggested by the Coalition and Tenneco. However, the Board accepts the clarifying amendment to the definition of BAT suggested by IEPA, with a slight modification. The Board modifies IEPA's amendment by adding the term "contemporaneously" in order to emphasize that BAT may be more stringent than an historical BACT determination. The Board believes that this clarification provides sufficient guidance and certainty for BAT determinations. Accordingly, the definition of BAT in the instant regulations at Section 205.130 has been amended as follows:

> "Best aAvailable tTechnology" ~~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 techniques for control of VOM, considering the features and production processes and control methods, systems, and techniques already used for the unit. BAT for an emission unit shall not be more stringent than Best Available Control Technology (BACT) as would be determined contemporaneously for such unit under the federal rules for Prevention of Significant Deterioration of Air Quality (PSD), 40 CFR § 52.21 (1996). In no event shall application 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.

Given this amendment, the Board finds it unnecessary to adopt Tenneco's final alternative, in which Zenith and Henri Studio concur, that would place an upper limit on BAT based upon the cost of VOM reduction. PC 25 at 16.

Section 205.410 Participating Source Shutdowns

This section provides procedures for participating sources that shut down all operations and withdraw their CAAPP permits. Participants in the rulemaking discussed (1) the disposition of ATUs after shutdown; and (2) the disposition of ATUs after consolidation. The Board modifies the provisions regarding the disposition of ATUs after shutdown, and the provisions regarding the disposition of ATUs after consolidation, in response to comments of IEPA and Sun Chemical. The Board has made other minor revisions to subsections (a), (b), and (c) for clarity.

Disposition of ATUs after Shutdown

Mr. Burke testified that the ALAMC opposed the Board's proposal that in the event a source shuts down, 80% of the ATUs associated with the source will remain with the source's owners, with the remaining 20% going to the ACMA. The ALAMC believes that all ATUs associated with a shutdown should be retired, at least until the region has reached attainment. Tr.10 at 144-145. The ALAMC believes that "there's no good reason to keep these credits in circulation when we still haven't reached attainment . . . ." Tr.10 at 145. Furthermore, the ALAMC believes that maintaining these ATUs suggests that "the ATUs are property when in reality they are part of an alternative regulatory system owned by the public, not individual companies." Tr.10 at 145.

The Board finds that the record does not support ALAMC's suggested change. The ERMS calls for substantial reductions that IEPA believes will assist the Chicago nonattainment area's efforts to achieve attainment. Also, the rule now expressly provides that ATUs are not property. See 35 Ill. Adm. Code 205.400(d).

Disposition of ATUs after Consolidation

At first notice, in response to a public comment from Sun Chemical Company (Sun Chemical), the Board added a new subsection (d) to Section 205.410 of the proposed rule. Under Section 205.410 as originally proposed, when a participating source shuts down, 80% of ATUs for that source continue to be issued to the owner or operator of the source, while 20% of such ATUs are issued to the ACMA. Subsection (d) creates an exception in the case of consolidation of sources under common control of the same persons or persons under common control. Where such sources are consolidated, under subsection (d) 100% of ATUs from the shutdown are transferred to

the participating source which remains in operation. The Board now concludes that subsection (d) is not necessary, but adds language to subsection (c) to confirm that 100% of ATUs can be transferred between participating sources before one of the participating source shuts down.

In its public comment, IEPA contends that addition of subsection (d) is unnecessary to achieve the goal sought by Sun Chemical, namely, preserving ATUs when two sources are consolidated. IEPA maintains that transfer of 100% of ATUs could be achieved under the original provisions of Section 205.410 before shutdown. In that case, the source shutting down would have future allotments of zero ATUs and none of the ATUs allocated to that source would go into the ACMA (*i.e.*, 20% of zero). PC 17 at 18.

IEPA also comments that handling consolidations under the original provisions of Section 205.410 provides greater flexibility in the event of consolidations which may take place over a period of time or consolidations in which one facility retains some operations and transfers others. PC 17 at 18-19. Finally, IEPA objects to the use of the undefined term "consolidation" in subsection (d). The proposed rule does not establish what is necessary for a "consolidation." Furthermore, consolidations under subsection (d) involve "sources under common control or ownership," a phrase which has a continually evolving meaning.

In its second public comment, Sun Chemical takes the position that specific language regarding consolidations will not be necessary if the Board includes a "Board Note" in the adopted rule addressing the ability of a participating source to transfer all its available ATUs prior to withdrawing its permit. In the alternative, Sun Chemical requests that the language contained in Section 205.410(d) remain in the final rule. PC 21 at 3-4.

The Board concludes that inclusion of subsection (d) of Section 205.410 is not necessary to achieve the result sought by Sun Chemical. To alleviate the concerns of Sun Chemical expressed in its second public comment, however, the Board has added additional language to Section 205.410(c). Revised Section 205.410 provides:

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.

* * *

c) The owner or operator of any participating source that shuts down all operations, in accordance with subsection (a) of this Section, 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. Any ATUs issued pursuant to a transfer agreement entered into under this subsection before shut down of all operations of the participating source shall not be subject to subsection (a) of this Section.

~~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% 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.~~

Section 205.500 Emissions Reduction Generator

This section allows permitted sources in the nonattainment area that are not required to participate in the ERMS 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). Sun Chemical has raised issues regarding (1) whether sources outside of the nonattainment area could be classified as ERGs and (2) how to treat a participating source's consolidation with a shutting down non-participating source.

The Board concludes that ATUs transferred between an ERG and a participating source based on a shutdown or curtailment of operations (1) should not be subject to the 80%/20% distribution rule, but (2) should be subject to a 12% reduction because the ATUs transferred were not previously part of any participating source's baseline. The Board also has modified subsection (g) for clarity.

Sources Outside of the Nonattainment Area

At first notice, the Board declined the request of Sun Chemical to amend Section 205.500 so that sources outside of the nonattainment area could be classified as ERGs.

The Board found that it would be premature to so expand the proposed ERMS, noting that sources outside the nonattainment area have not been considered in the State's plan to achieve the 9% ROP, and that emissions redistributed from attainment areas into the nonattainment area could result in the failure to achieve the 9% ROP. ERMS (July 10, 1997), R97-13, slip op. at 47.

ALAMC agreed with the Board on this issue at hearing and reiterated that agreement in public comment. Tr.10 at 143; PC 30 at 4. IEPA also agrees with the Board's position and proposes that Section 205.500 be amended to specify that ERGs are limited to sources located in the Chicago ozone nonattainment area. PC 17 at 21. In its public comment filed on September 8, 1997, IEPA proposes the following specific change to Section 205.500:

> 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 located in the Chicago ozone nonattainment area with an operating permit(s) other than a participating source or new participating source. PC 27 at 9.

In its public comments after first notice, Sun Chemical agrees with the Board's decision to not allow trading at this time between sources located inside and sources located outside the nonattainment area, but urges the Board not to add IEPA's proposed language so limiting the location of ERGs. PC 21 at 6-7. Sun Chemical asserts that if IEPA's language is added, the rule would have to be revised "to allow trading between the attainment and non-attainment areas if and when that form of trading became acceptable." PC 21 at 7. Sun Chemical would prefer the rule's language as it is so that such a trading "option would remain open" and could be used "once [such trading] is allowed." PC 21 at 7. Sun Chemical argues that the change is unnecessary to prevent such trading because there is no requirement that IEPA allow sources located outside the nonattainment area to be ERGs, rather the decision would be within IEPA's discretion. PC 21 at 7.

In response to Sun Chemical's comments, IEPA states that "consideration in the ERMS of emission reductions outside of the non-attainment area is not allowed nor appropriate to fulfill" the 1999 ROP requirement and thus "it is better that the rule is clear on this point rather than ambiguous." PC 35 at 16-17. In addition, IEPA asserts that if the reduction percentage under the ERMS needs to be increased in the future for ROP or attainment requirements, the ERMS rules will need revision and "[t]his would be the proper point to address the role, if any, which emission reductions that occur outside of the non-attainment area can then take in the ERMS." PC 35 at 17.

The Board finds IEPA's arguments persuasive. Sun Chemical's reasoning that IEPA's proposed change should not be made so that such trading may take place if and when it becomes "acceptable" could lead to numerous disputes over when such trading should be considered "acceptable." Moreover, given the potential impact of such trading

on Illinois' ability to meet ROP and attainment requirements, it is appropriate that it not be allowed before going through a Board rulemaking. Accordingly, the Board finds that the above revision proposed by IEPA is appropriate and the attached order reflects this change to Section 205.500.

Consolidation

In its initial public comment, Sun Chemical also sought clarification of the operation of Section 205.500 of the proposed rule, dealing again with consolidation of sources. Sun Chemical noted that Section 205.480(a)(2) (now renumbered as 205.500(a)(2)) of the proposed rule prohibited issuance of ATUs otherwise available as an ERG from a source that shuts down if emissions from the source are redistributed to a participating source in the Chicago nonattainment area. Sun Chemical also suggested that in the event of consolidation of sources, the post-consolidation source should receive 100% of ATUs issued for the ERG, rather than 80% as provided in Section 205.500(b) of the proposed rule, under which the other 20% go to the ACMA.

The Board did not modify Section 205.500 at first notice, but asked for comment on the issues that Sun Chemical raised. In a public comment, IEPA acknowledged that the situations described by Sun Chemical were not contemplated in the proposed rule. PC 17 at 21. IEPA noted that the ERG's ATUs from the shutdown activity and the future continuation of the shutdown activity would both go to the same participating source and consequently there is not a concern about issuance of ATUs for an activity for which the participating source will not be held accountable under ERMS. IEPA stated that it would therefore endorse provisions in Section 205.500 to allow issuance of ATUs for an ERG in the described situation. PC 17 at 22.

With regard to the percentage of ATUs to be issued for a shutdown, where that shutdown involves a nonparticipating source, IEPA stated that it does not, as a matter of policy, believe it necessary to direct 20% of the ATUs to the ACMA when the ATUs would continue to be associated with operational emissions units. IEPA noted a distinction between this situation and that where two participating sources are consolidated. In the former situation, the ATUs would not exist independent of the shutdown of the ERG source and so could not be transferred prior to shutdown, as they could in the case of a shutdown of a participating source. As a result, additional provisions of Section 205.500 would be necessary to govern issuance of ATUs for an ERG when the underlying operations continue in the Chicago nonattainment area due to a consolidation of operations. PC 17 at 23.

In its second public comment, IEPA proposed the following additional language be added to Section 205.500:

> (a)(4) Notwithstanding Section 205.500(a)(3), ATUs based on shutdown or curtailment of operations at a source in the Chicago ozone nonattainment area may be issued to a participating source or new

participating source to the extent that such shut down or curtailed operations are distributed to such participating source or new participating source.

(b) If any proposal is based on a shut down of operations, as specified in subsection (a)(2) and (a)(4) of this Section, that results in seasonal emissions reductions of 10 tons or more, 20% of ATUs issued based on such an emissions reduction generator proposal shall be allocated to the ACMA. PC 27 at 10.

In its most recent public comment, Sun Chemical supports the addition of the proposed subsection (a)(4), but asserts that ATUs issued for ERGS where a nonparticipating source has been consolidated with a participating source should not be subject to the provision of subsection (b) under which 20% of such ATUs are allocated to the ACMA.

In its most recent public comment, IEPA apparently reverses its earlier position that it is not necessary to allocate ATUs to the ACMA when the ATUs would continue to be associated with operational emissions units. IEPA now maintains that the 20% allocation to the ACMA is appropriate because nonparticipating sources were not subject to the 12% baseline reduction imposed on participating sources. IEPA also suggests that the 20% allocation to the ACMA was the result of a compromise between environmental and industry groups, which ought not be upset.

The Board finds that it is appropriate to add a provision to Section 205.500 to permit transfer of ERG ATUs realized from the consolidation of operations from a nonparticipating source with a participating source. The Board notes that IEPA earlier acknowledged that this situation was not considered when the proposed rule was drafted. The applicability of the 20% provisions to this situation could not, consequently, have been part of the compromise asserted by IEPA. The Board also finds, however, that inasmuch as issuance of ATUs for multiple seasons (which can occur under Section 205.500(h)(2) and (3)) results in a *de facto* increase in the baseline for a participating source, it is appropriate for such ATUs to be subject to the 12% reduction requirement imposed on participating sources. Accordingly Section 205.500 has been amended as follows:

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:

* * *

2) The source shuts down a portion or all of its operations 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 ozone 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~~.~~; or

4) The source shuts down operations or curtails seasonal production activity as described in subsections (a)(2) and (a)(3) of this Section, respectively, and the VOM emissions from the shut down activity or activities or curtailment will be distributed to a participating or new participating source or sources within the Chicago ozone nonattainment area, and the proposal provides that all ATUs issued pursuant to this Section on account of such shut down or curtailment are to be issued to the corresponding participating or new participating source or sources.

* * *

d) Any proposal submitted shall include the following:

* * *

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) or (a)(4) 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 subsections (a)(3) or (a)(4) of this Section;

* * *

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 subsections (a)(2) or (a)(4) 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.

* * *

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

* * *

3) If the proposal is based on a partial or complete shut down, as specified in subsections (a)(2) or (a)(4) of this Section, ATUs shall be issued before the seasonal allotment period for each year specified in the proposal;

* * *

8) The number of ATUs issued pursuant to subsections (h)(2) or (h)(3) of this Section based on a proposal under subsection (a)(4) of this Section shall be equal to the number of ATUs otherwise issuable under this Section reduced by 12 percent.

Section 205.620 Account Officer

This section provides, among other things, that each market participant must have an IEPA-approved account officer assigned to its transaction account and that such account officer is the only person authorized to make ATU transactions involving that account.

As explained below, IERG wants a participant to be able to designate more than one account officer to its transaction account. The Board finds this appropriate and amends Section 205.620 accordingly. The Board also has made other minor changes to this section for clarity and consistency.

In public comments filed after first notice, IERG stated that the present language of Section 205.620(a) may limit participants to one account officer per transaction account and that such a limitation may hinder "each source's ability to execute ERMS transactions in the most efficient manner." PC 20 at 8. IEPA states that IERG's suggestion is acceptable but warns that "any of the account officers designated by a source and duly registered with the Illinois EPA can authorize ATU transactions on behalf of the source" and that if there are "multiple account officers, the account officers are responsible for coordinating their actions, not the Illinois EPA." PC 35 at 17.

Neither IERG nor IEPA propose any specific language for Section 205.620. The Board, nevertheless, agrees with IERG's suggestion and makes the following change to Section 205.620(a):

> a) Each participating source, new participating source, or general participant must have ~~an~~ at least one account officer designated for each of its Transaction Accounts. The account officer(s) shall be the only person(s) 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: . . . .

Section 205.700 Compliance Accounting

ALAMC recommends that the rule specify the minimum frequency with which IEPA conducts audits (referred to in the rule as "Compliance Master File Reviews"). PC 30 at 4. ALAMC suggests that IEPA perform an audit at least once every two years. *Id*.

The Board does not believe it appropriate to require IEPA to audit each source every two years. IEPA may properly consider a number of factors in deciding how frequently to conduct audits, including a source's compliance history and IEPA's own resources.

Section 205.720 Emissions Excursion Compensation

Section 205.720 provides the procedures for emissions excursion compensation from participating sources and new participating sources. An emissions excursion occurs when a source fails to hold the required number of ATUs at the end of a reconciliation

period. Participants in this rulemaking have raised issues about the following: (1) whether there should be a penalty for the sale of invalid ATUs regardless of whether the sale results in an emissions excursion; and (2) whether language should be added to specify how IEPA will determine whether an emissions excursion has occurred.

As explained below, the Board finds that there is no need to amend this section to address the sale of invalid ATUs or to address how IEPA will determine the occurrence of an emissions excursion.

Sale of Invalid ATUs

As currently proposed, this section imposes no penalty for the sale of invalid ATUs unless doing so creates an emissions excursion. ALAMC believes that this section should include a penalty for the sale of invalid ATUs whether or not the sale results in an emissions excursion. PC 30 at 4.

The Board believes that the rule already contains sufficient penalties for the sale of invalid ATUs. Any source attempting to use ATUs to demonstrate compliance with ERMS must ensure that they are valid, or they will not be accepted by IEPA. That will result in the purchaser having an emissions excursion. Thus, purchasers of ATUs have an incentive to be sure that the ATUs they purchase are valid, and no additional regulation on this point is necessary.

Determination of Emissions Excursion

ALAMC also believes this section should specify how IEPA will determine whether an excursion has occurred. PC 30 at 4. The Board is not persuaded, however, that it must dictate the procedure that IEPA must follow when determining that an emissions excursion has occurred. An emissions excursion 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 allotment period . . . ." 35 Ill. Adm. Code 205.130. The Board does not see any advantage in requiring IEPA to follow a specific procedure when determining that an emissions excursion has occurred; such procedures could hamper rather than aid IEPA's enforcement efforts.

Section 205.760 Market System Review Procedures

This section requires IEPA to prepare an Annual Performance Review Report. ALAMC comments that this report should include a source-by-source compliance summary for participating sources and new participating sources that includes key information on each source, including information on: annual seasonal emissions; ATU allotments; excursions; corrective action plans; and similar items. PC 30 at 6.

The Board finds that it is unnecessary to require IEPA to provide this information. While it may be advisable for IEPA to provide such information in its Annual Performance Review Report - and this rule certainly does not prohibit IEPA from including this information - the Board declines to order IEPA to include all of this information in its Annual Performance Review Report. Furthermore, if IEPA does not voluntarily make such information available, the public should be able to obtain it through Freedom of Information Act requests.

CONCLUSION

The Board finds that the ERMS is technologically feasible and economically reasonable, and allows sources to select a cost-effective means of reducing VOM emissions in accordance with the CAA and USEPA directives. The Board accordingly adopts the ERMS for second notice.

ORDER

The Board directs that the second notice of the following revised proposal be submitted to the Joint Committee on Administrative Rules.

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

SUBCHAPTER b: ALTERNATIVE REDUCTION PROGRAM

PART 205
EMISSIONS REDUCTION MARKET SYSTEM

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205.110 Purpose
205.120 Abbreviations and Acronyms
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205.150 Emissions Management Periods

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SUBPART D: SEASONAL EMISSIONS MANAGEMENT

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SUBPART E: ALTERNATIVE ATU GENERATION

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SUBPART F: MARKET TRANSACTIONS

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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 22~~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 subject to the ERMS regulatory program will not be required to reduce emissions to an extent that exceeds their proportionate share of the total emissions reductions required of all emission sources ~~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 through 58.12~~ et seq.~~]
ATU	Allotment Trading Unit
BAT	Best Available Technology
CAA	Clean Air Act as amended in 1990 [42 U.S.C. §§ 7401 through 7671q~~ 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
USEPA	United States Environmental Protection Agency

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 [415 ILCS 5/39.5] and in 35 Ill. Adm. Code 211.

"Account officer" means a natural person who has been approved by the Agency, as specified in Section 205.620~~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 as determined under Subpart C~~, 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 ~~a~~Available ~~t~~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 techniques for control of VOM, considering the features and production process and control methods, systems and techniques already used for the unit. BAT for an emission unit shall not be more stringent than Best Available Control Technology (BACT) as would be determined contemporaneously for such unit under the federal rules for Prevention of Significant Deterioration of Air Quality (PSD), 40 CFR § 52.21 (1996). 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 205.720~~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 of each year 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 may ~~is allowed to~~ purchase and retire ATUs but not sell ATUs, as specified in Section 205.610~~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, 205.315, 205.320(e)(3) or (f)~~(4)~~ and 205.750~~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 on or 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 Sections 205.220, 205.225 and 205.750~~650~~ of this Part.

e) Any participating source that commences operation of a major modification on or 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 on or 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 March~~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~~ reduces 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 MarchJanuary 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 or new participating source are exempt from the requirements of this Part.

Section 205.225 Startup, Malfunction or Breakdown

Participating or new 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 205.750~~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 MarchJanuary 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 [415 ILCS 5/39.5] 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 after~~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 [415 ILCS 5/39.5(8)] 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 for, 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 are~~is~~ appealed, the baseline emissions for the source shall be as proposed in the source's ERMS application during the pendency of ~~during~~ 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 is not disputed in the appeal. ~~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). Such source shall be permitted to emit~~ If such source's seasonal VOM emissions exceed the ATUs it holds at the end of reconciliation periods during the pendency of the appeal, the source will not be deemed to have had an emissions excursion to the extent that such seasonal VOM emissions do not exceed the amount it proposed as its baseline in its ERMS application, less reductions required pursuant to Section 205.400(c) or (e) of this Part, if applicable. Such source shall not be allowed to sell ATUs during the pendency of the appeal.

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 [415 ILCS 5/40.2].

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 [415 ILCS 5/40.2]. If the permit conditions establishing the

Agency's BAT~~best available technology~~ determination are ~~is~~ appealed, ATUs shall be allotted to the source for any emission unit for which the Agency's BAT~~best available technology (BAT)~~ determination is being appealed with~~out~~ the emissions reduction ~~otherwise~~ required by Section 205.400(c) or (e) 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 these emission units are using BAT instead of two years after the issuance as set forth at Section 205.400(b).~~ If the seasonal VOM emissions for the subject emission unit(s) exceed the ATUs that are attributed to the unit(s) during the pendency of the appeal, the source will not be deemed to have an emissions excursion to the extent that such seasonal VOM emissions do not exceed the amount of ATUs that would be attributed to this unit if the BAT exclusion was accepted. Such source shall not be allowed to sell ATUs during the pendency of the appeal.

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 [415 ILCS 5/39.5], 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) When a CAAPP~~A~~ permit for a participating source is~~may be~~ transferred from the current permittee~~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 March~~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 propose to 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). When considering whether to substitute a seasonal baseline emission year(s), the Agency must consider the information submitted by the source pursuant to Section 205.310(b)(1)(B), as well as the accuracy of that data. For the purposes of this subsection, "non-representative

conditions" include, but are not limited to, events such as strikes, fires, floods and market conditions.

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 equaled or 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. For the purposes of this subsection, "non-representative conditions" include, but are not limited to, conditions such as strikes, fires, floods and market conditions.

d) The baseline emissions of any participating source shall be increased for voluntary over-compliance that occurred after October 31~~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 to demonstrate ~~for~~ attainment or reasonable further progress ~~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 [415 ILCS 5/39.5], 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 in accordance with Section 205.400(c) 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, in accordance with the rulemaking provisions of Sections 9.8, 27 and 28 of the Act [415 ILCS 5/9.8, 27 and 28], that further reductions are needed ~~in accordance with the rulemaking provisions of Sections 9.8, 27 and 28 of the Act~~. An allotment or a baseline under this Part does not constitute a property right. Nothing in this Part shall be construed to limit the authority of the Board to terminate or limit such allotment or baseline pursuant to its rulemaking authority under Sections 9.8, 27, and 28 of the Act [415 ILCS 5/9.8, 27 and 28].

e) If the baseline emissions for any participating source is increased~~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 or more 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~~, if satisfying Section 205.405(a)(1), (2) or (3) prior to May 1, 1999, shall be excluded from the VOM emissions reductions requirement specified in Section 205.400(c) and (e) of this Subpart as long as such emission units continue to satisfy Section 205.405(a)(1), (2) or (3):

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, prior to May 1, 1999, BAT ~~the best available technology~~ for controlling VOM emissions, VOM emissions from such emission unit~~s~~ shall not be subject to the VOM emissions reductions requirement specified in Section 205.400(c) or (e) of this Subpart as long as such emission unit continues to use such BAT. 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 BAT ~~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 BAT~~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 under subsections (a) or (b) of this Section. 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, in accordance with subsection (a) of this Section, ~~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, in accordance with subsection (a) of this Section, 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. Any ATUs issued pursuant to a transfer agreement entered into under this subsection before shut down of all operations of the participating source shall not be subject to subsection (a) of this Section.

~~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 located in the Chicago ozone nonattainment area 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~~.~~; or

4) The source shuts down operations or curtails seasonal production activity as described in subsections (a)(2) and (a)(3) of this Section, respectively, and the VOM emissions from the shut

down activity or activities or curtailment will be distributed to a participating or new participating source or sources within the Chicago ozone nonattainment area, and the proposal provides that all ATUs issued pursuant to this Section on account of such shut down or curtailment are to be issued to the corresponding participating or new participating source or sources.

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 [415 ILCS 5/39.5].

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) or (a)(4) 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 subsections (a)(3) or (a)(4) 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 subsections (a)(2) or (a)(4) 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 participating source, new participating source or general participant~~applicant~~ in writing of its final decision with respect to the proposal within 45 days after~~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 subsections (a)(2) or (a)(4) 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 pursuant to this subsection shall be valid for the seasonal allotment period following issuance and for the next seasonal allotment period; and

8) The number of ATUs issued pursuant to subsections (h)(2) or (h)(3) of this Section based on a proposal under subsection (a)(4) of this Section shall be equal to the number of ATUs otherwise issuable under this Section reduced by 12 percent.

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 after~~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 after~~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. Such ATUs shall only be valid for the seasonal allotment period in which the emissions reductions were achieved, unless the Agency specifies in its approval that such ATUs shall be valid for the seasonal allotment period following issuance and for the next seasonal allotment period.

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~~,~~ and 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~~ at least one account officer designated for each of its Transaction Accounts. The account officer(s) shall be the only person(s) 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 35 Ill. Adm. Code 205~~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 candidate~~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~~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 205.720~~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 [415 ILCS 5/39.5(7)(ii)] 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~~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 after~~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~~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 after~~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~~. For any emissions excursion during 1999 by a participating or new participating source that was not issued a CAAPP permit before May 1, 1998, all references in Section 205.720(b)(1) and (3), (c) and (e) to 1.2 times the emissions excursion shall be 1.0 times the emissions excursion. The Agency shall obtain ~~the~~ emissions 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 after~~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 pursuant to this Section ~~Emissions Excursion Compensation~~ shall not be subject to enforcement authority granted to the State or any person under applicable State or federal~~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)]. ~~[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 [415 ILCS 5/1]. Nothing in this Part limits the right of the federal~~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 after~~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 [415 ILCS 5/39.5(7)(k)] 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 after~~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 [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 205.720(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;

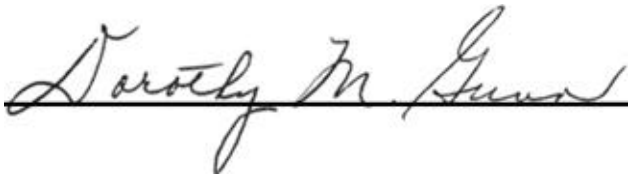
8) The average market price for ATU transactions from the previous seasonal allotment period; and

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 2nd day of October 1997, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

ATTACHMENT 1

Exhibits

1.	Figure 2	NO_X & VOC Disbenefit Effects
2.	Figure 3	Ozone Concentrations Measured at Southern LMOS Boundary
3.	Figure 4	VOC Reduction at Different Background Levels
4.	Table 1	1970-2007 Chicago VOM Emissions Summary Tons Per Ozone Season Weekday (TPD)
5.	Figure 5	OTAG Map Regional Oxidant Model (ROM) - Super Domain
6.	Table 2	Summary of Attainment/ROP Scenario with ERMS Program @ 4% '97 - '99
7.	Figure 1	1990 Chicago SIP Inventory Summary VOM Emissions
8.	Figure 2	1990 Chicago ROP Inventory Summary VOM Emissions
9.	Table 1	15% ROP Plan Breakdown
10.	Figure 3	Chicago VOM Emissions: 1970-1996
11.	Figure 4	Projected Chicago VOM Emissions: 1996-2007
12.	Table 2	Chicago Area Source Category Summary
13.	Table 3	Chicago Off-Road Mobile Category Summary
14.	Table 4	Illinois VOM Reduction Program
15.	Figure 5	1996-2007 VOM Emissions for Chicago
16.	Table 5	Ozone Exceedances: 1988-1994
17.	Table 6	VOM Sources in Chicago
18.	Table 7	Analysis of ERMS Participating Sources
19.	Key Events in Development of SO2 Trading Program	

20. Clean Air Act Amendments of 1990 Effect on Acid Deposition in North America

21. Cost of SO2 Emission Control is Much Lower than Expected

22. IEPA 1993 Pre-Feasibility Study for Ozone Precursor Trading

23. Key Principles Shared by SO2 and ERMS Trading

24. Reserved for Pg. 13 SO2 Emission from the Largest Sources but was not entered into the record.

25. Reserved for Pg. 14 Regional Emission Trades but was not entered into the record.

26. Pg. 15 Macroeconomic Impacts

27. Pg. 16 Cost Changes if Trading is Restricted

28. Pg. 18 Savings Through Trading

29. Pg. 26 1994 Auction Results

30. Pg. 27 SO2 Allowance Values

31. Agency's Errata #1 dated 2/3/97

32(a) Chris Romaine Testimony 1/2/97

32(b) Chris Romaine Testimony 1/9/97

33. Donald Sutton Testimony dated 1/2/97

34. David Kolaz Testimony dated 1/2/97

35. Gale Newton Testimony dated 1/2/97

36. Roger Kanerva Testimony dated 1/2/97

37. Gary Beckstead dated 1/2/97

38. Pg. 12 Acid Emissions

39. Pg. 19 Utility Investments Decisions

40. Pg. 20 Over Allowance System

41. Pg. 17 IV CAA

42. Pg. 21 Key Components of System

43. Pg. 22 Allowance System Compliance

44. Pg. 23 Emission Monitoring

45. Pg. 25 Allowance Auctions

46. Testimony of Bill Compton dated 1/13/97

47. Example for ACMA Access prepared by Roger Kanerva for ERMS Hearing dated February 3, 1997

48. Testimony of Sarah Dunham dated January 2, 1997

49. Overhead entitled “Application of California Standards” introduced 03/10/97

50. Overhead entitled “Alternative Control Approaches” introduced 03/10/97

51. Overhead entitled “Regional Economic Impacts of Alternative Control Approaches” introduced 03/10/97

52. Overhead entitled “Two Ways in Which a Facility may Gain from Trading” introduced 03/10/97

53. Overhead entitled “Example Rubber and Plastics Facility” introduced 03/10/97

54. Overhead entitled “Example Organic Chemical Manufacturer” introduced 03/10/97

55. Overhead entitled “Group 1: Facilities with high control costs” introduced 03/10/97

56. Overhead entitled “Group 2: Facilities with low control costs” introduced 03/10/97

57. Overhead entitled “Regional Economic Impact of Trading Simulation” introduced 03/10/97

58. Testimony of Dr. Case pre-filed on February 3, 1997

59. Testimony of Mr. Marder of Illinois Environmental Regulatory Group (IERG) (dated April 2, 1997) and Attachment A (dated April 9, 1995) pre-filed on April 3, 1997

60. IERG's Proposed Language for Section 205.320(g) dated April 21, 1997

61. Testimony of Mr. Starkey on behalf of IERG (dated April 2, 1997) pre-filed on April 3, 1997

62. Testimony of Mr. Cobb on behalf of Jefferson Smurfit (dated April 4, 1997) pre-filed on April 4, 1997

63. Testimony of Mr. Skalon for Allied Tube & Conduit Corporation on behalf of the Emission Reduction Market System (ERMS) Coalition and pre-filed on April 4, 1997

64. Testimony of Mr. Fasano for White Cap, Inc. on behalf of ERMS Coalition pre-filed on April 4, 1997

65. Testimony of Mr. Burke on behalf of the American Lung Association of Metropolitan Chicago pre-filed on April 4, 1997

66. An additional page to the testimony of Mr. Burke on behalf of the American Lung Association of Metropolitan Chicago dated April 8, 1997

67. Testimony of Mr. Svendsen for Chase Products Company on behalf of ERMS Coalition pre-filed on April 4, 1997

68. Testimony of Mr. Raymond Sr. for Rayvac Plastics Decorators, Inc. on behalf of ERMS Coalition pre-filed on April 4, 1997

69. Testimony of Mr. Deveikis for TC Industries, Inc. on behalf of ERMS Coalition pre-filed on April 4, 1997

70. Testimony of Mr. Hultquist for Treasure Chest Advertising Company on behalf of ERMS Coalition pre-filed on April 4, 1997

71. Testimony of Ms. Smith for TC Industries and Chase Products Company on behalf of ERMS Coalition pre-filed on April 4, 1997

72. Testimony of Mr. Bharat Mathur dated August 8, 1997

73. Testimony of Mr. Richard Forbes dated August 8, 1997

74. Testimony of Mr. Christopher Romaine dated August 8, 1997

75. Testimony of Mr. Roger Kanerva dated August 8, 1997

76. Testimony of Mr. Sidney Marder dated August 7, 1997

77. Testimony of Mr. James Wakeman dated August 8, 1997

78. Memorandum regarding “Future Nonroad Emission Reduction Credits for Court Ordered Nonroad Standards”

ATTACHMENT 2

Public Comments Received

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. (WMI)
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
PC 17	Comments of IEPA
PC 18	Comments of WMI
PC 19	Comments of USEPA
PC 20	Post-Hearing Comments of IERG
PC 21	Supplemental Comments of Sun Chemical
PC 22	Comments of the ERMS Coalition
PC 23	Comments of Jefferson Smurfit Company (JSC)
PC 24	Comments of Zenith Electronics Company and Henri Studio, Inc.
PC 25	Comments of Tenneco Plastics Company
PC 26	Comments of the City of Chicago
PC 27	Comments of IEPA
PC 28	Comments of Amoco Oil Company
PC 29	Comments of USEPA
PC 30	Comments of the American Lung Association of Metropolitan Chicago
PC 31	Comments of the American Bakers Association
PC 32	Reply Comments of Dart Container Corporation
PC 33	Reply Comments of Sun Chemical

PC 34	Reply Comments of JSC
PC 35	Reply Comments of IEPA

ATTACHMENT 3

Abbreviations and Acronyms Used in this Second Notice Opinion and Order

Act	Illinois Environmental Protection Act
AER	Annual Emissions Report
AIRS	USEPA AIRS Facility Database
ALAMC	American Lung Association of Metropolitan Chicago
ATU	Allotment Trading Unit
Bakers	American Bakers Association
BACT	Best Available Control Technology
BAT	Best Available Technology
Board	Illinois Pollution Control Board
CAA `	Clean Air Act
CAAPP	Clean Air Act Permit Program
CFR	Code of Federal Regulations
Coalition	ERMS Coalition
Dart	Dart Container Corporation
ERMS	Emissions Reduction Market System
Exh.	Exhibit
Fed. Reg.	Federal Register
IEPA	Illinois Environmental Protection Agency
IERG	Illinois Environmental Regulatory Group
ILCS	Illinois Consolidated Statutes
JCAR	Joint Committee on Administrative Rules
JSC	Jefferson Smurfit Corporation
LAER	Lowest Achievable Emissions Rate
MACT	Maximum Achievable Control Technology
NAAQS	National Ambient Air Quality Standards
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NO_x	Nitrous Oxides
NSR	New Source Review
OTAG	Ozone Transport Assessment Group
PC	Public Comment
PSD	Prevention of Significant Deterioration
RACT	Reasonably Available Control Technology
RFP	Reasonable Further Progress
ROP	Rate of Progress
SIP	State Implementation Plan
SO_2	Sulfur dioxide
Tenneco	Tenneco Plastics Company
TPD	Tons per day
TPS	Tons per season
TPY	Tons per year
U.S.C.	United States Code

USEPA	United States Environmental Protection Agency
VOM	Volatile Organic Material
WMI	Waste Management Inc. of Illinois
Zenith	Zenith Electronics Corporation