BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	**R22-17**
AMENDMENTS TO 35 ILL. ADM. CODE PART 203: MAJOR STATIONARY SOURCES CONSTRUCTION AND MODIFICATION, 35 ILL. ADM. CODE PART 204: PREVENTION OF SIGNIFICANT DETERIORATION, AND PART 232: TOXIC AIR CONTAMINANTS	)	

NOTICE

TO: Don Brown
Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601-3218

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Pollution Control Board the **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION FOR WAIVER OF REQUIREMENTS and ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S COMMENTS REGARDING THE FIRST NOTICE VERSION OF THE PROPOSED RULE** a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Sally O. Carter

Sally Carter
Assistant Counsel
Division of Legal Counsel

DATED: June 17, 2024

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO 35 ILL. ADM. CODE 203: MAJOR STATIONARY SOURCES CONSTRUCTION AND MODIFICATION, 35 ILL. ADM. CODE PART 204: PREVENTION OF SIGNIFICANT DETERIORATION, AND 35 ILL. ADM. CODE PART 232: TOXIC AIR CONTAMINANTS	)	**R22-7 (Rulemaking – Air)**

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION FOR WAIVER OF REQUIREMENTS

The Illinois Environmental Protection Agency ("Agency"), by its attorney and pursuant to 35 Ill. Adm. Code 101.500, hereby moves the Illinois Pollution Control Board ("Board") to waive certain requirements, namely that the Illinois Environmental Protection Agency's Comments Regarding the First Notice Version of the Proposed Rule ("Agency's Comments") not exceed 50 pages in length as otherwise provided by 35 Ill. Adm. Code 101.302(k). In support of this Motion, the Agency states as follows:

1. On April 18, 2024, the Board issued its Opinion and Order proposing to revise Parts 201, 202, 203, 204, and 232 of its air pollution rules. The First Notice version of the proposed rules ("First Notice Version") were published in the *Illinois Register* on May 3, 2024.

2. While the Board welcomed comment on any matter relevant to the proposal, the Board specifically requested comment on two topics. The Agency has provided a considered response for each topic, as requested by the Board.

3. In addition, the First Notice Version of Parts 203 and 204 would make many changes to IERG's proposal as previously agreed to by the Agency. Given the nuanced nature of many aspects of the federal nonattainment new source review (NA NSR) and prevention of significant deterioration (PSD) programs, the Agency carefully compared the First Notice

Version and the federal blueprint.[1] In many instances, the planned changes to Parts 203 and 204 would substantively alter Part 203 and Part 204 in a way that is contrary to the requirements at 40 CFR 51.165 and 40 CFR 51.166 for state implementation plan ("SIP") approval of state NA NSR and PSD permitting programs. In doing so, these changes may threaten the United States Environmental Protection Agency's ("USEPA") ability to approve revised Parts 203 and 204 as part of Illinois' SIP. Consequently, the Agency's Comments must address many provisions in the First Notice Version.

4. While the Agency's Comments are in excess of 50 pages in length, this is reasonable given both the complexity and significance of the changes that would potentially be made to Parts 203 and 204, as reflected in the First Notice Version. The Agency has sought to provide a detailed review of the First Notice Version, particularly how it compares to the federal blueprint and existing Part 203 and Part 204, to assist the Board in this rulemaking. At the same time, the Agency diligently attempted to minimize the length of the Agency's Comments and, where possible, the Agency has not responded to trivial or collateral matters. Despite these efforts, the Agency has found it impossible to set forth the numerous matters that must be addressed in no more than 50 pages.

5. Concurrently with this Motion, the Agency is submitting the Illinois Environmental Protection Agency's Comments Regarding the First Notice Version of the Proposed Rule to the Board for filing, which filing is in excess of 50 pages in length.

[1] For purposes of NA NSR, the Agency also carefully compared the First Notice Version to existing SIP-approved Part 204 and, in certain instances, existing SIP-approved Part 203. For purposes of PSD, the Agency also carefully compared the First Notice Version to existing Part 204 and 40 CFR 52.21.

WHEREFORE, for the reasons set forth above, the Illinois Environmental Protection Agency respectfully requests that the Board provide approval for the Agency to file the Agency's Comments in excess of fifty pages.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Sally A. Carter

Sally Carter
Assistant Counsel
Division of Legal Counsel

DATED: June 17, 2024

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO 35 ILL. ADM. CODE 203:	)	R22-7
MAJOR STATIONARY SOURCES	)	(Rulemaking – Air)
CONSTRUCTION AND MODIFICATION,	)	
35 ILL. ADM. CODE PART 204: PREVENTION	)	
OF SIGNIFICANT DETERIORATION, AND	)	
35 ILL. ADM. CODE PART 232: TOXIC AIR	)	
CONTAMINANTS	)	

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S COMMENTS REGARDING THE FIRST NOTICE VERSION OF THE PROPOSED RULE

The Illinois Environmental Protection Agency ("Agency"), by its attorney, offers the following comments on the Illinois Pollution Control Board's ("Board") Opinion and Order, dated April 18, 2024, ("Order").

Updates to and Clarification of the Opinion Offered in the Order

The Agency observes that the designated attainment/unclassifiable or nonattainment areas in the state have changed since the Illinois Environmental Regulatory Group (IERG) filed its pre-filed testimony with the Board. Significant to this discussion is that 35 Ill. Adm. Code Part 203, Major Stationary Sources Construction and Modification, is applicable to the proposed construction of a new major stationary source or major modification at an existing major stationary source of air pollutants generally regulated under the Clean Air Act (CAA), except to the extent that Prevention of Significant Deterioration (PSD) is or could be applicable for such proposed project.[1] In the last paragraph on page 8, the Board, citing to the testimony of Mr. Alec

[1]The first preconstruction permitting program, the nonattainment new source review (NA NSR) program, applies to those areas of the country designated nonattainment with respect to a particular criteria pollutant. 42 USC §§ 7501-7509. The Agency currently administers the NA NSR program in Illinois through 35 Ill. Adm. Code Part 203. The second preconstruction permitting program, the PSD program, may be applicable in those areas formally designated as attainment or unclassifiable with the National Ambient Air Quality Standard (NAAQS) for both criteria and non-criteria pollutants. 42 USC §§ 7470-7479, 40 CFR 81.

Davis, formerly of IERG, identified the following areas as designated nonattainment areas in Illinois:

> The greater Chicago area is classified serious nonattainment for the 2008 8-hour ozone standard and marginal nonattainment for the 2015 8-hour ozone standard. *Id.* at 4-5.

Order at page 8. Since IERG filed its pre-filed testimony, the greater Chicago area has been redesignated to attainment for the 2008 8-hour ozone standard. However, it is still nonattainment for ozone now being classified as moderate nonattainment for the 2015 8-hour ozone standard.[2]

In addition, the Agency observes that the following statement was made in the opinion offered in the Order:

> The requirements for major stationary sources in non-attainment areas authorize the proposed construction or modifications as long as it complies with the control technology requirements, reduces emissions from existing sources to protect air quality in the area, is constructed or modified in a manner consistent with existing regulations, and provides the public opportunity to comment before the issuance of the final permit [TSD at 6].

Order at page 3. To ensure that this discussion is clear and addresses all requirements for a proposed unit or source subject to NA NSR, the Agency would offer that, all such requirements also include the requirement that the owner or operator of the new major stationary source and/or major modification that state-wide compliance by major sources in Illinois has been achieved,[3]

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[2] The United States Environmental Protection Agency (USEPA) recently revised the annual $PM_{2.5}$ NAAQS effective May 6, 2024. The revised standard is 9.0 micrograms per cubic meter ($\mu g/m^3$); the prior standard was 12.0 $\mu g/m^3$. While Illinois currently does not have any areas designated $PM_{2.5}$ nonattainment for the prior 12.0 $\mu g/m^3$ standard, there are counties in several areas in Illinois that could be designated nonattainment under the revised standard. The Agency must transmit recommendations to USEPA on the areas in Illinois that should be designated as nonattainment, attainment and unclassified. USEPA must then complete rulemaking for the attainment designation relative to the revised standard. The CAA provides until May 2026 for this process to be completed, unless USEPA determines that more time (up to a year) is needed to obtain sufficient information to make such designations.

[3] The owner or operator would be required to demonstrate that all major stationary sources which he or she owns or operates in Illinois are in compliance or on a plan to achieve state-wide compliance with all applicable state and federal air pollution control requirements. *See,* proposed Section 203.1820, Compliance by Existing Sources.

and that an alternative analysis has been completed addressing the impacts or costs of a project and its benefit.[4] *See,* Sections 173(a)(3) and (a)(5) of the CAA.

Inadvertent Errors and Omissions in the Board's Opinion Regarding "Disputed Issues"

In the Board's Section-By-Section Summary of Proposal, the Board neglected to include its findings regarding what it has characterized as the "Disputed Issues" discussed on pages 12 through 17 of the Order. For purposes of Section 203.1340, Regulated NSR Pollutant, the Board "declined to move forward to first notice with IERG's proposed language at Section 203.1340(c)(3) or the Board Note." Order at page 14. Instead, the Board adopted the language recommended by the Agency as this provision would more closely mirror the language from 40 CFR 51.165(a)(1)(xxxvii)(C)(*2*) providing that VOM (or volatile organic compounds) and ammonia are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area. *Id.* Given the Board's proposed divergence from IERG's regulatory proposal, the Board also agreed to remove the incorporation by reference of 40 CFR 51.1006(a)(3) from Section 203.1000. *Id.* While making these findings in the Board's Discussion Section in the Order, the Section-by-Section Summary of Section 203.1340, Regulated NSR Pollutant, did not mention these findings.[5] Rather, the discussion focused solely on IERG's initial proposal.

The Agency requests that the Board's Section-by-Section Summary of Section 203.1340 not deviate from the Board's findings earlier in its Order. Consistent with the Order, proposed Section 203.1340(c)(3) would read as follows:

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[4] The owner or operator shall demonstrate that the benefits of the new major stationary source or modification significantly outweigh the environmental and social costs imposed as a result of the proposed project. *See,* proposed Section 203.1830.

[5] The Board aptly noted in its Section-by-Section discussion of proposed Section 203.1000 that 40 CFR 51.1006(a)(3) had been removed from its list of incorporated material due to the changes proposed by the Board from IERG's proposed Section 203.1340(c)(3). *See,* Order at page 18.

Section 203.1340 Regulated NSR Pollutant

"Regulated NSR pollutant" means the following:

***

c) Any pollutant that is identified under this Section as a constituent or precursor of a general pollutant listed under subsection (a) or (b), provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors for purposes of NSR are the following:

***

3) VOM and ammonia are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area.

For purposes of Section 203.1450, Control of Ozone, PM_{10} and $PM_{2.5}$, the Board found that the last sentence proposed by IERG for inclusion in Section 203.1450 would not be included in the First Notice Version. Order at page 14. While making this finding and making this change to IERG's proposed language to be included in the First Notice Version, the Section-by-Section Summary of Section 203.1450, Control of Ozone, PM_{10}, $PM_{2.5}$ did not mention this finding. Rather, the Board's discussion focused solely on IERG's initial proposal. The Agency requests that the Board's Section-by-Section Summary of Section 203.1450 address and reflect the Board's findings earlier in its Order recognizing that that reference to Section 203.1340(c)(3)(A) in proposed Section 203.1450 would not be appropriate.

Section 203.1450 Control of Ozone, PM_{10}, and $PM_{2.5}$

The control requirements of this Part which are applicable to major stationary sources and major modifications of $PM_{2.5}$ shall also apply to major stationary sources and major modifications of $PM_{2.5}$ precursors which are regulated NSR pollutants in a $PM_{2.5}$ nonattainment area. ~~The Agency shall exempt new major stationary sources or major modifications of a particular precursor from the requirements of this Part for $PM_{2.5}$ if the precursor is not a regulated NSR pollutant as provided by Section 203.1340(c)(3)(A).~~

For purposes of Section 203.1600, Construction Permit, the Board found that based on the Board's Discussion of Section 203.1810, "the Board agrees with IEPA and deletes the last sentence in Section 203.1600(a)." Order at page 15. While making this finding, the Board did not mention this finding in its Section-by-Section Summary of Section 203.1600 or in proposed language included in the First Notice Version. Rather, the Board's discussion focused solely on IERG's initial proposal. The Agency requests that the Board's Section-by-Section Summary of Section 203.1600 address and reflect the Board's findings earlier in its Order.

Section 203.1600 Construction Permit

a) The Agency shall only issue a construction permit for a new major stationary source or a major modification that is subject to the requirements of this Part, other than this Subpart or Subpart R, if the Agency determines all applicable requirements of this Part, other than this Subpart and Subpart R, are satisfied. ~~This includes the requirements in Section 203.1810(h) if IPT would be relied upon for all or a portion of the emissions offset that must be provided for such a source or modification.~~

For purposes of Section 203.1810(g), Emissions Offsets, the Board stated that it "is convinced that IEPA's position on proposed emissions offsets language is correct. For Section 203.1810(g), the Board finds that the language should mirror the CAA and language traditionally used in SIPs approved by the USEPA." Order at page 16. While making this finding, the Board did not repeat this finding in its Section-by-Section Summary of Section 203.1810(g) or in proposed language included in the First Notice Version. Rather, the Board's Discussion of proposed Section 203.1810(g)(3) focused solely on IERG's initial proposal, that while based on the federal CAA, IERG's proposal was worded similar to 35 Ill. Adm. Code 203.303(f). The Agency requests that the Board's Section-by-Section Summary of Section 203.1810(g) address and reflect the Board's findings earlier in its Order.

For purposes of Section 203.1810(h), Emissions Offsets, the Board found as follows:

> The Board agrees with IEPA's interpretation of the D.C. Circuit Court's rationale regarding emissions of air pollutants, which includes the pollutant formed by precursor pollutants, or solely the precursor pollutants actually emitted. As explained by the IEPA, 40 CFR 51.165(a)(11) provides for submitting a plan that may authorize the offset requirements for emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursor may be satisfied by [interprecursor trading] IPT. However, the blueprint does not require including IPT in any SIP submittal. In light of this, the Board will delete Section 203.1810(h) in its entirety as suggested by IEPA and remove the acronym for IPT in Section 203.1010.

Order at page 16.[6] While making this finding, the Board did not mention this finding in its Section-by-Section Summary of Section 203.1810(h) or in the proposed language of the First Notice Version. Rather, the Board's discussion focused solely on IERG's initial proposal that would have allowed for inter-pollutant trading of precursor pollutants by means of proposed Section 203.1810(h) to satisfy the offset requirement for permitted emissions of direct $PM_{2.5}$. Nor did the Board make any mention of its decision to remove the corresponding reference to the abbreviation for interprecursor trading in Section 203.1010, Abbreviations and Acronyms. The Agency requests that the Board's Section-by-Section Summary of Section 203.1810(h) and Section 203.1010 address and reflect the Board's earlier findings in its Order.

For purposes of Section 203.2280, Significant Emissions Unit, Section 203.2290, Small Emissions Unit, and Section 203.2330, Setting the 10-Year Actuals PAL[7] Level, the Board

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[6] As such, no reference to interprecursor trading would be appropriate in Section 203.1810(e)(1). The Agency renews its request that the Board not include a reference to IPT in proposed Section 203.1810(e)(1):

> ~~Except as provided in subsection (h), which addresses interprecursor trading for $PM_{2.5}$,~~ e Emission reductions must be for the pollutant for which emission offsets are required, e.g., reductions in CO emissions cannot be used as emission offset for increases in emissions of SO_2 reductions.

See, Illinois EPA's Comments and Recommendations for Additional Revisions, dated March 21, 2022 (Agency Comments) at page 35. The Agency requests that the Section-by-Section Summary of Section 203.1810(e)(1) and the proposed language of the First Notice Version mirror the same.

[7] PAL is an acronym for Plantwide Applicability Limitation.

"agrees that the Board Note could confuse parties in the future and not add a substantive requirement." Order at page 17. Consequently, the Board would not be including the proposed note in Sections 203.2280, 203.2290 or 203.2330 in the First Notice Version. While making this finding, the Section-by-Section Summary of Sections 203.2280, 203.2290 or 203.2330 or the proposed language included in the First Notice Version neglected to incorporate this finding. Rather, the Board's discussion focused solely on IERG's proposal. The Agency requests that the Board's Section-by-Section Summary of Sections 203.2280, 203.2290 or 203.2330 address and reflect the Board's findings earlier in its Order.

Inadvertent Errors and Omissions in the Opinion Offered in the Order

The proposed revisions to Section 201.169, Special Provisions for Certain Operating Permits, Section 201.175, Registration of Smaller Sources (ROSS), and Section 202.306, Standards for Issuance, would update these provisions so that they would address Part 204 in addition to Parts 201 and 203.[8] Revisions to these sections were proposed by the Agency in its Initial Comments and Recommendations for Additional Revisions, dated January 18, 2022 (Agency Initial Comments). It is important that this rulemaking clearly and accurately track the origins of each regulatory provision so as to avoid unnecessary confusion in future implementation.

The Agency, not IERG, also suggested a 40 tpy significance level for ammonia. As originally proposed by IERG, Section 203.1370(a) would have set a 70 tpy significance level for ammonia as it is a precursor to $PM_{2.5}$. *See,* Agency Initial Comments, pages 19 – 23. ("If the Board decides to set a significance level for ammonia, absent detailed justification and

[8] In the Section-By-Section Summary of Proposal, the Opinion and Order neglected to indicate that it was the Agency, rather than IERG, that proposed revisions to Section 201.169, Section 201.175, and Section 202.306. This should be mentioned to keep the regulatory history clear.

support, the Illinois EPA would suggest the significance level for ammonia be set at 40 tpy to be consistent with the most conservative of other established significance levels."). The Agency requests that the Section-By-Section Summary accurately reflect the origins of the significance level for ammonia.

Finally, the Agency also proposed all but two of the revisions to Part 204. The Agency previously proposed as follows:

> While IERG has identified two of the necessary revisions to Part 204 as identified by USEPA in its proposed approval of Part 204, IERG has not proposed to revise the remainder of these omissions or typographical errors in its regulatory proposal with the Board. The Illinois EPA will address each of these omissions or typographical errors one at a time.
>
> 1. **Section 204.490(c)(3).** IERG's regulatory proposal would correct the typographical error in 35 Ill. Adm. Code 204.490(c)(3) by making reference to 42 U.S.C. 7425 rather than 42 U.S.C. 7435.
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> 2. **Section 204.620**. Subsection 204.620(c)(4) should refer to Subsections 204.620(c)(1) and (2) – not Subsections 204.620(c)(2) and (c)(3) – in order to be consistent with 40 C.F.R. 51.166(y)(2)(iv). Note that existing subsections (c)(1) and (c)(2) correctly refer to subsection (c)(3).
>
> 3. **Section 204.930(c)(4).** IERG's regulatory proposal would replace the phrase "this Section" with "this Part" to be consistent with 40 CFR 51.166(g)(3)(iv),
>
> 4. **Section 204.1500**. Subsection 204.1500(b) states, in part, "The Agency shall, *with the consent of the Governor*, determine that the source or modification may employ a system of innovative control technology if …" [Emphasis added]. To be consistent with 40 C.F.R. 51.166(s)(2), the phrase "with the consent of the Governor" should be replaced with the phrase "with consent of the Governor(s) of other affected State(s)."
>
> 5. **Section 204.420**. Subsection 204.420(a)(2)(A) refers to 40 C.F.R. Part 52 but omits 40 C.F.R. Part 51 as required by 40 C.F.R. 51.100(ii)(2)(i). The definition of "Good Engineering Practice" in Section 204.420(a)(2)(A) is meant to include those stacks in existence on January 12, 1979, and for which the owner or operator had obtained all necessary preconstruction approvals required under 40 CFR Part 51 and Part 52.
>
> In its proposed approval of Part 204, the USEPA also noted that 35 Ill. Adm. Code 204.330 did not include the following phrase as provided by 40 C.F.R.

> 51.166(b)(22): "Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information."
>
> ***
>
> [T]he Illinois EPA recommends that the second sentence of 40 CFR 51.166(b)(22) be inserted in 35 Ill. Adm. Code 204.330.
>
> While not noted in the USEPA's proposed PSD SIP approval, there is an extra parenthesis after "Standard Industrial Classification Manual" in Subsection 204.290(a).
>
> ***

Agency Initial Comments, pages 8-10. To avoid unnecessary confusion in future implementation, the Agency requests that the Section-By-Section Summary accurately reflect the origins of this proposal to correct inadvertent omissions or typographical errors in Part 204.

Renewed Request that the Board Adopt Agency's Interpretations of the Proposed Rules Where Differ from IERG's Interpretations Offered by Its Technical Support Document

Given the significance of the NA NSR permitting program to the public, sources, the Agency, as the permitting authority, and to the Board, as the permit review authority, it is important that this rulemaking be accurate and complete. In the ordinary course, such a rulemaking including the Statement of Reasons and Technical Support Document would be filed by the Agency. Unnecessary confusion in future implementation could occur where the legal basis for any deviation from the federal blueprint[9] was not addressed and explained by either IERG, the Agency in its review of IERG's proposal or by the Board in its Opinion and Order adopting the final rule. This could prove challenging for the Agency and permit applicants during permitting and the Board as the review authority for appeals of permits.

[9] "Federal blueprint" commonly refers to the state implementation plan requirements for NA NSR under 40 CFR 51.165.

While the Agency recognizes the work of IERG in developing this proposed rulemaking, it is reasonable that that the administrative record accurately reflects the intended interpretation of Part 203. As such, it is important in those areas where the Agency disagrees with the TSD as submitted by IERG that the Opinion and Order of the Board be as clear as possible to avoid future confusion over how these provisions are to be applied. The Agency renews its request that the Board note these opinions in its Opinion and Order. [10]

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[10] While the Agency did not request that the Board adopt the Agency's explanation of what would happen when a permitting authority established a new emission limit following the expiration of a PAL, the Agency's description of proposed Section 203.2360 and 40 CFR 51.165(f)(9)(i) is correct. For completeness and accuracy in the record of this rulemaking, the Agency would point the Board to the Agency's Comments, pages 36 – 37 and Illinois EPA's Second Set of Answers, Comments and Recommendations, dated September 12, 2022 (Agency Second Comments), pages 24 – 26. As the Agency previously explained:

> IERG states in its TSD that "[I]f a PAL permit expires, the permitting authority must establish new emission caps or other emission limits for all emissions units at the source . . ." TSD, page 16, footnote 17. As a point of clarification, 40 CFR 51.165(f)(9)(i) provides that the source shall comply with existing emission limits but does not discuss the establishment of new emission caps by the permitting authority. The blueprint indicates that the source is to comply with the equivalence of the emission cap that existed in the now-expired PAL permit until the permitting authority issues a revised permit establishing new emission limits.

Agency's Comments, page 37. As the Agency went on to explain:

> The language of the blueprint is clear – it does not require the establishment of emission caps by the permitting authority upon expiration of a PAL. Rather, the blueprint provides that following expiration of the PAL, the permitting authority will establish new limits on allowable emissions for individual emissions units or groups of emissions units.
>
> ***
>
> Until a revised permit is issued, the source shall comply with a source-wide multi-unit emissions cap equivalent to the level of the PAL emission limitation.

Agency Second Comments, pages 25 – 26.

In addition, the Agency offered the following explanation of footnote 18 in IERG's TSD discussing certain exceptions that would cause a PAL to be adjusted downward during renewal of the PAL.

> As a second point of clarification, IERG stated as follows in a footnote accompanying IERG's discussion of a PAL renewal:

Definition of "Net Emissions Increase"

On April 4, 2022, the Board tendered questions to the Agency and, at hearing on April 7, 2022, followed up with an additional question. The exchange is provided below.

> 3-1. There are certain comments the Agency has made, including the definition of net emissions increase where you have provided the Agency's interpretation of the proposed rules, and some explanations differ from IERG's technical support document descriptions. So the question is whether IEPA wants your interpretation to be memorialized in this opinion, if the Board agrees with that?
>
> **Yes, if the Board agrees with the Illinois EPA's interpretation, the Illinois EPA would like its interpretation memorialized in the Board's Opinion and Order.**

See, Agency Second Comments, page 5.

While in the context of discussing the definition of "net emissions increase" in proposed Section 203.1260(b)(2)(A), subsection (b) identifies the steps that would be followed to determine whether the increase or decrease in actual emissions is available and subsection (b)(2) addresses whether the increase or decrease in actual emissions is creditable, the Agency explained:

> It should also be clearly understood that increases and decreases in actual emissions that are only used for netting are creditable in future permitting as long as they are contemporaneous if they are only used for netting, i.e., if no NA NSR permit relied upon the increase or decrease in emissions. However, if a NA NSR permit relied upon or "addressed" an emission decrease or emission increase, that decrease or increase

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> There are two more exceptions resulting in adjustment of the new PAL: (1) if the source's PTE has declined below the current PAL level, the new PAL must be adjusted downward so that it does not exceed the source's PTE; and (2) if the new value for the PAL would exceed the current PAL, the new PAL must be set at the value of the current PAL, unless the PAL major modification procedures are satisfied.
>
> TSD at page 16, footnote 18. The accompanying footnote memorializes two of the three exceptions resulting in a *downward* adjustment of a PAL during a renewal. While the first point in footnote 18 requires no clarification, the Illinois EPA would offer for the second point: if the new value for the PAL would exceed the current PAL, and the source did not timely comply with the provisions for a modification or increase in a PAL, any new PAL must be set at the value of the current PAL.

Agency Comments, pages 37 - 38.

can no longer be considered in future netting analyses.[11] This has been addressed by USEPA in guidance.[12]

> There are situations, such as when a source nets out of review, when the permitting authority does not rely on creditable emissions increases or decreases "in issuing a PSD permit." For example, when a source nets out of review, no PSD permit is issued. As such, the reviewing authority has not relied on any creditable emissions increases or decreases in issuing a permit, so the emissions increases and decreases are still available for future applications.
>
> ***
>
> Rather we view each of the contemporaneous and otherwise creditable emissions increases and decreases considered by the source in netting out of review as still being fully available, and must therefore be included in the next netting transaction at the source.
>
> ***
>
> Use of Netting Credits, John Calcagni, Director, Air Quality Management Division, USEPA, to Bruce P. Miller, Chief, Air Programs, Region IV, December 29, 1989.[13]

Agency Comments, pages 7 – 8.

Later while discussing the definition of "net emissions increase" in proposed Section 203.1260(b)(3)(D), again, subsection (b) identifies the steps that would be followed to determine whether the increase or decrease in actual emissions is available and in subsection (b)(3) whether the decrease in actual emissions is creditable. IERG's proposal in subsection

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[11] Most importantly, the increases in emissions from the major project addressed by the NA NSR permit do not need to be included in future netting analyses even if that major project would still be contemporaneous with a subsequent project.

[12] While this guidance was made in the context of PSD permitting, the same circumstances apply for purposes of NA NSR permitting. *See also*, 40 CFR 51.166(b)(3)(iii)(*b*) and 35 Ill. Adm. Code 204.550(b)(3).

[13] Note that this USEPA guidance does not indicate that emission reductions that have been used as emission offsets in a NA NSR permitting transaction are still creditable for use as contemporaneous emission decreases for netting in a subsequent permitting transaction. Such reductions would not be credible for future netting because they have been relied upon by the NA NSR permit. Moreover, this guidance does not suggest that emission decreases used for netting would still be considered "surplus" and be potentially available for use as offsets.

(b)(3)(D) would have provided that "the Agency has not relied on it in issuing any permit under 35 Ill. Adm. Code 201.142 or 201.143 or this Part or 35 Ill. Adm. Code Part 204 and has not relied on it for demonstrating attainment or reasonable further progress." To this, the Agency offered as follows:

> Reference should also be made to 40 CFR 52.21 in proposed Section 203.1260(b)(3)(D) to address any Prevention of Significant Deterioration (PSD) permit historically issued by the Illinois EPA as a delegated permitting authority. This change is necessary because permits historically issued pursuant to 40 CFR 52.21 could be relevant for proposed Section 203.1260(b)(3)(D).
>
> While IERG has included the references requested by USEPA to proposed 35 Ill. Adm. Code 201.142 and 201.143 and Part 204 in proposed Section 203.1260(b)(3)(D), with the exception of the reference to 40 CFR 52.21, IERG concludes in its Technical Support Document (TSD) that the inclusion of these proposed references are "immaterial." TSD at page 30. Based on discussions between the Illinois EPA and the USEPA concerning the inclusion of similar language in the blueprint and statements made by USEPA during its review of the definition of "Net Emissions Increase" in other SIP submittals, the Illinois EPA cannot agree with IERG's characterization that the requested language is "immaterial." *See,* 80 Fed. Reg. 14044, 14055 (March 18, 2015); *see also,* 82 Fed. Reg. 25213, 25217 (June 1, 2017). The Illinois EPA requests that the Board decline to characterize the inclusion of such references in the definition of "Net Emissions Increase" as "immaterial."

Agency Comments, pages 8 - 9.

Definition of "Project"

The term "project" is typically used to identify the scope of activities that a source must review together to determine whether new source review (NSR) applies. Recent statements by the USEPA on project aggregation discuss why it is so important to accurately define the scope of the "project" under review. 83 Fed. Reg. 57324, 57325-57326 (November 15, 2018). As such, the Agency requested that the Board adopt its interpretation of "project" as would be provided by proposed Section 203.1310.

4. Regarding the definition of "project" under Section 203.1300, please clarify whether any revisions to the proposed rules are necessary to reflect the Agency's concerns to address "debottlenecking" and "project netting." If not, comment on whether the

Agency wants the Board to memorialize the Agency's concerns in the Board opinion.

While no rule language changes are necessary, if the Board agrees with the Illinois EPA's interpretation, the Illinois EPA would like its interpretation memorialized in the Board's Opinion and Order.

See, Agency Second Comments, page 5.

While IERG offers a brief discussion of those activities that constitute a single project in its TSD, no mention is made of the role that technical and economic dependency plays in such decision. TSD at page 19. When determining the applicability of NA NSR, a collection of activities that is technically and economically related or interdependent are routinely addressed as a single project. 83 Fed. Reg. 57324 (November 15, 2018). IERG accurately states that "[w]hen determining the applicability of NA NSR, a source owner is not allowed to split a project into multiple, nominally separate changes, each with its own analysis of emissions increase, possibly circumventing NA NSR permitting for the project as a whole." TSD at page 19. However, just as problematic is a source owner that would inappropriately combine separate projects to show a net zero to avoid aggregation of emissions under the *de minimis rule*. 42 USC § 7511a(c)(6).[14]

IERG offers the 2009 Aggregation and Project Netting rulemaking as one example of an instance where existing Part 203 has yet to be updated to incorporate some of USEPA's more recent amendments to 40 CFR 51.165. IERG asserts that this rulemaking "clarified 'three aspects of the NSR program - aggregation, debottlenecking[15] and project netting – that pertain to how to determine what emissions increases and decreases to consider in determining major NSR applicability for modified sources.'" SOR at page 11, citing PSD and NSR: Aggregation and Project Netting, 74 Fed. Reg. 2376 (January 15, 2009). However, this final action did not address debottlenecking and project netting. The very next sentence in the preamble to this final rulemaking stated as follows:

This final action addresses only aggregation.

This action retains the current rule text for aggregation and interprets that rule text to mean that sources and permitting authorities should combine

[14] The *de minimis rule* refers to the applicability provisions for projects at major stationary sources in serious or severe ozone nonattainment areas.

[15] Project emissions include the debottlenecking of any up-stream or down-stream equipment, or any increased utilization of support facilities. Modifications may involve emission increases at units that are not physically altered themselves but are debottlenecked or otherwise affected by a physical change or change in the method of operation of an emission unit. For instance, units that are upstream or downstream of the unit(s) that is being physically or operationally modified may have increases in emissions due to the changes at the modified units.

> emissions when activities are "substantially related." It also adopts a rebuttable presumption that activities at a plant can be presumed not to be substantially related if they occur three or more years apart.
>
> With respect to the other two components of the originally proposed rule, the EPA is taking no action on the proposed rule for project netting and, by way of a separate document published in the "Proposed Rules" section of this Federal Register, is withdrawing the proposed revisions for debottlenecking.

74 Fed. Reg. 2376 (January 15, 2009).[16] While this 2009 final action only addressed aggregation, project aggregation was again addressed by USEPA in November 2018. 83 Fed. Reg. 5734 (November 15, 2018).[17] In August 2019, USEPA proposed to replace and withdraw the Project Netting Proposal. 84 Fed. Reg. 39244 (August 9, 2019).

Agency Comments, pages 8 - 9.

Definition of "Significant"

"Significant" is another essential definition when determining whether a proposed project at an existing major stationary source is a major modification for a pollutant. *See*, Section 203.1370. Given the importance of this definition to the permitting of a major modification in a nonattainment area, the Agency previously offered the following and requests that the Board adopt the same in any subsequent Opinion and Order of the Board.

5. Regarding the significant emissions rate for NOx and VOM in serious or severe ozone nonattainment areas, the Agency states that the information in the TSD table (pg. 19-20) is inaccurate and incomplete. PC 6 at 23. Further, the Agency provides clarification of how "netting" must be applied to be consistent with the USEPA's

[16] When determining whether certain activities should be considered a single project, the "2009 NSR Aggregation Action called for sources and reviewing authorities to aggregate emissions from nominally - separate activities when they are 'substantially related.'"83 Fed. Reg. 57326 (November 15, 2018). To be substantially related, the "interrelationship and interdependence of the activities [is expected], such that substantially related activities are likely to be jointly planned (i.e., part of the same capital improvement project or engineering study) and occur close in time and at components that are functionally interconnected." 74 Fed. Reg. 2378 (January 15, 2009).

[17] This most recent project aggregation action adds "[t]o be 'substantially related,' there should be an apparent interconnection – either technically or economically – between the physical and/or operational changes, or a complementary relationship whereby a change at a plant may exist and operate independently, however, its benefit is significantly reduced without the other activity." 83 Fed. Reg. 57327 (November 15, 2018).

guidance. *Id.* at 24-25. Please comment on whether any rule language changes are necessary to maintain consistency with the USEPA guidance on the application of "netting" to determine significant emissions of NOx and VOM. If so, propose the appropriate language changes.

No rule language changes are necessary. The Illinois EPA's discussion on pages 23 through 25 of the Illinois EPA's Initial Comments was offered to clarify and correct information in the TSD table on pages 19 through 20 as it addressed the significant emissions rate for NOx and VOM in serious and severe ozone nonattainment areas.

See, Agency Second Comments, pages 5 - 6.

The Agency offered the following clarification to IERG's discussion of significant emissions rate for NOx and VOM in serious or severe ozone nonattainment areas. *See*, Section 203.1370(c).

Clarification to IERG's TSD

Material in the TSD regarding significant emissions rates warrants response by the Illinois EPA. The TSD contains a table reflecting the significant emission rates for different pollutants as proposed by revised 35 Ill. Adm. Code 203. TSD at pages 19-20. The information in this table is inaccurate and incomplete as it addresses the significant emissions rate for NOx and VOM in serious or severe ozone nonattainment areas. *See*, Section 203.1370(c). The table in the TSD states that for NOx and VOM "the rate is 25 tpy in areas classified as serious or severe nonattainment for ozone." TSD at page 20. However, proposed Section 203.1370(c) would provide that for serious or severe ozone nonattainment areas an increase in emissions of VOM or NOx is significant if the net emissions increase of such air pollutant from a stationary source *exceeds* 25 tons when *aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years* which includes the calendar year in which such increase occurred. (*Emphasis added*). Consequently, for a proposed project in a serious or severe ozone nonattainment area, the significant emission rate for VOM or NOx is a rate *greater than* 25 tpy. Then it is not just the net increase in emissions from the proposed project that must be considered but also other net increases in emissions from the source during a five consecutive calendar year period that includes the calendar year in which the increase from the proposed project would occur.

A similar discussion is offered elsewhere in the TSD but the TSD then states that the applicability provisions for projects at major stationary sources in serious or severe ozone nonattainment areas or the *de minimis rule* differs from the otherwise applicable major modification applicability procedure in two respects:

> (1) the threshold for triggering the requirement for a *netting analysis* is any increase rather than a larger threshold such as 25 tpy or 40 tpy, and (2) the contemporaneous period for the *netting analysis* is shorter.

TSD, page 29. The Illinois EPA is particularly concerned with the characterization of the *de minimis rule* as a "netting analysis." Rather, if there would be any net increase in emissions of VOM or NOx from a proposed project at a major source in a serious or severe ozone nonattainment area, the determination whether the proposed project is significant must consider any other net increases in NOx or VOM emissions, as applicable, from the stationary source during the five consecutive calendar year period that includes the calendar year when the increase would occur. If together these increases would exceed 25 tpy, the increase in emissions would be "significant" as defined in proposed Section 203.1370. Such an approach to applicability differs from "netting" where netting is only needed if the emissions increase from a proposed project is significant by itself. In the "netting analysis" the emissions increase for the project may be summed with all other contemporaneous[18] increases and decreases at the source to show that the "net increase" in emissions is not significant. USEPA refers to this second step as a "netting exercise." *New Source Review Workshop Manual* (Draft 1990), *NSR Manual* at A.35.

Agency Comments, pages 23 - 25.

Response to Topics for Which the Board Requested Comments

In the Order, the Board requests comment on two topics. First, the Board "invites the participants during the first notice comment period to explain their positions on whether the Board should proceed to second notice" in light of "specific concerns about federal language." Order at page 7. This request was made by the Board while discussing USEPA's pre-publication proposal to revise several provisions of its NSR preconstruction permitting regulations related to Project Emissions Accounting (PEA). Since the Board went to First Notice, the USEPA

[18] The five-year period for aggregation of emissions increases in serious and severe ozone nonattainment areas is also different than the contemporaneous period for netting analyses. For netting, the contemporaneous period extends back five years from the date that a timely and complete change is submitted for the proposed project and forward to the date that the increase from the project would occur. The period for aggregation, which is calendar years, extends back four calendar years from the year in which the increase from the project would occur (one year plus four years is five years).

published in the Federal Register, its proposed rule that would revise these provisions in its NSR regulations. 89 Fed. Reg. 36870 (May 3, 2024).

As PEA currently exists, emissions decreases as well as increases are to be considered in Step 1 of the applicability determination process for a modification if the emission changes are part of the project. Emission decreases that are unrelated to the project would not be considered in Step 1 under PEA but may be available in Step 2 (contemporaneous netting). On May 3, 2024, USEPA published in the Federal Register a proposed rule that would revise PEA. According to USEPA, this proposal would both improve implementation and enforceability of the NSR program. 89 Fed. Reg. 36870, 36872 (May 3, 2024). The proposal would clarify the definition of the term "project" to include criteria for determining the scope of a project that may be subject to major NSR requirements consistent with USEPA's final action on "project aggregation." 83 Fed. Reg, 57324 (November 15, 2018). The term "project" is defined under the existing rules at 40 CFR 51.165(a)(1)(xxxix) as a "physical change in, or change in the method of operation of, an existing major stationary source." USEPA's proposal would expand upon the definition of "project" as "a discrete physical change in, or change in the method of operation of, an existing major stationary source, or a discrete group of such changes (occurring contemporaneously at the same major stationary source) that are substantially related to each other. Such changes are substantially related if they are dependent on each other to be economically or technically viable." For purposes of NA NSR, the definition of "project" would also provide that "[i]n an extreme ozone nonattainment area, a 'project' means each discrete operation, emissions unit, or other pollutant-emitting activity." USEPA's proposal would strengthen monitoring, recordkeeping, and reporting requirements applicable to minor modifications at existing major stationary sources to improve the enforceability of the NSR

applicability provisions. USEPA's proposal would also require that the emissions decreases considered in Step 1, significant emissions increase determination, of the applicability process be made enforceable. 89 Fed. Reg. 36870 (May 3, 2024). Finally, USEPA's proposal would bar sources located in certain areas violating the federal air quality standards from utilizing PEA to calculate net emissions.

When the topic of potential revisions to USEPA's PEA rule was initially discussed by the Agency in the Agency Second Comments, the Agency stated that it did not object to revisions to Part 203 to reflect 40 CFR 51.165 as it now exists. The Agency elaborated:

> The Illinois EPA's opinion is that this rulemaking should ensure that Part 203 meets the requirements for a [state implementation plan] SIP approval by the United States Environmental Protection Agency (USEPA) in 40 CFR 51.165. A key constraint on the Board is whether the USEPA will approve IERG's proposed revisions to Part 203.

Agency Second Comments, page 4. At the time that the Agency made this statement, the USEPA had not acted to propose revisions to its NSR preconstruction permitting regulations related to PEA but rather had merely made statements that it had decided to amend certain provisions related to PEA, the details of which had not yet been proposed. *See, New Jersey v. U.S. Envt'l Prot. Agency,* No. 21-1033 (D.C. Cir.). Given these changes have now been proposed, the Agency would propose that Part 203 (and Part 204) be consistent with USEPA's recent regulatory activity, i.e., USEPA's proposed rule addressing Regulations Related to Project Emissions Accounting, 89 Fed. Reg. 36870 (May 3, 2024).

In the event the Board were to decide that it would be appropriate for Part 203 (and Part 204) to be updated to be consistent with USEPA's recent regulatory proposal, the Agency would be willing to submit proposed language for the Board's review. Given the highly nuanced nature of USEPA's proposed regulations pertaining to project emissions accounting, the Agency would

require time for consultation with the USEPA. After such consultation, the Agency would be prepared to offer proposed language to the Board.

Second, the Board seeks comment on any implications of USEPA's pre-publication proposal for PEA on this rulemaking. Order at page 7. The topic upon which the Board specifically seeks comments is whether the addition of provisions similar to USEPA's proposal for PEA is warranted for inclusion in Illinois' Na NSR and PSD program at this time. The Agency would offer that Part 203 and Part 204 should, at a very minimum, respectively contain the minimum requirements of 40 CFR 51.165 and 40 CFR 51.166 as they now exist.[19] The Agency would further offer that it would be best if this proposed regulatory action incorporates USEPA's recent revisions related to PEA.

It is very clear to the Agency that USEPA's rulemaking proposal related to PEA would increase the rigor and stringency of its NSR rules compared to current rules. If these provisions are not included in the instant regulatory action, in the event USEPA's proposal becomes final, the Agency and the Board would have to undertake further rulemaking at that time to make these proposed revisions related to PEA. The Agency believes it would be more efficient for the Board to address USEPA's proposal now rather than by means of a new regulatory proposal in the future. In the event USEPA's proposal does not become final, a revised Part 203 incorporating updated regulations related to PEA would be approvable by USEPA. Implementation of more stringent rules has been recognized by USEPA as satisfying the requirements of the CAA and 40 CFR 51.165. Accord., 84 Fed. Reg. 2063 (February 6, 2019) (Illinois' Part 203 contained the minimum required elements of 40 CFR 51.165 for Illinois'

[19] Consistent with the legislative mandate, when the Agency proposed the state's PSD program it was based largely on the federal PSD regulations at 40 CFR 52.21 but further, the requirements for a SIP submittal to USEPA in 40 CFR 51.166. *Accord.*, Sections 3.363 and 9.1(c) of the Act, 415 ILCS 5/3.363 and 9.1(c).

ozone nonattainment areas despite not memorializing 2002 NSR reform; NSR reform would potentially decrease the number of construction projects at existing major sources that would meet the definition of major modification and thereby trigger the applicable requirements of NA NSR).

Background to Regulatory Proposal

The First Notice Version of Part 203 reflects changes to IERG's proposal as previously agreed to by the Agency except for disputed issues discussed above or elsewhere in this proceeding.[20] Many of these revisions appear to be grammatical in nature, mainly focusing on replacing "shall" with the term "must," replacing "such" with a variety of words and the selective removal or insertion of a comma. To the casual observer, these changes might appear as largely inconsequential. Unfortunately, in many instances, these changes substantively alter the proposal in a way that is contradictory to the federal blueprint rule currently at 40 CFR 51.165 and further would deviate from existing SIP-approved Part 204. In doing so, these changes may threaten approval of revised Part 203 as part of Illinois' SIP or, at a minimum, create confusion in future implementation especially to the extent the provisions in Part 203 unnecessarily deviate from what would be expected to be corresponding provisions in Part 204.[21]

[20] The Agency would point the Board to Exhibit A of the Agency Second Comments. In Exhibit A, the Agency offered a redline of Part 203, excluding proposed Section 203.100, to identify revisions to existing Part 203 that would be acceptable to the Agency. While the Agency has identified in this filing additional revisions to existing Part 203 that would be acceptable to the Agency, Exhibit A to the Agency's Second Comments identifies many of these revisions to existing Part 203. If the Board would like Exhibit A to the Agency's Second Comments updated to reflect the substance of the Agency's Comments Regarding the First Notice Version of the Proposed Rule, the Agency would be willing to submit updated language for the Board's review.

[21] *See,* Section 9.1(a) of the Act ("It is the purposes of this Section to avoid the existence of duplicative, overlapping or *conflicting* State and federal regulatory systems.") (*Emphasis added*).

Perhaps it bears repeating that the General Assembly intends for any revisions to existing Part 203 meet the requirements of Section 173 of the CAA. *See,* Section 9.1(c) of the Act, 415 ILCS 5/9.1(c). This necessarily includes not only the federal implementing rules but an accumulation of case authorities and interpretative guidance that are instructive to the meaning of the federal NA NSR rules. If the text of revised Part 203 deviates from this framework, it could presumptively result in a determination that these rules are less stringent than required by the federal rules. To this end, it is important that any such departure from the federal rules be a product of careful deliberation and not concern over a misplaced comma or clause.

Confusion in future implementation could also occur to the extent that Part 203 is not consistent with the federal blueprint, especially where the legal basis for any changes to technical terms or phrases from the federal blueprint was not elaborated upon by IERG in its regulatory proposal, by the Agency in its filings with the Board or by the Board in its final Order adopting the rule. This could prove challenging in subsequent permit appeals and enforcement proceedings, affecting sources, the Agency in its role as the permitting authority, and the Board as the review authority.

In addition, the Act established a new definition of "NA NSR permit" in Section 3.298 of the Act to mean a permit or a portion of a permit for a new major source or major modification that is issued by the Agency under the construction permit program pursuant to subsection (c) of Section 9.1 that has been approved by the USEPA and incorporated into the Illinois SIP to implement Section 173 of the CAA and 40 CFR 51.165.[22] The regulatory proposal as previously

[22] This definition comports with the mandate of the CAA that requires states to develop and submit for USEPA approval SIPs. The CAA's NA NSR requirements are among the requirements that must be addressed in a state SIP. 42 U.S.C. § 7410(a)(2)(C) & (I). The practical effect of Illinois' definition of "NA NSR permit" is that the proposed revisions to Part 203 would not replace existing Part 203 until these new rules have been SIP-approved by the USEPA. In the interim, NA NSR permitting in Illinois

agreed to by the Agency is based as closely as possible on the the requirements for SIP approval in 40 CFR 51.165 and, in those instances where the provisions of Part 203 should be identical to the provisions in Part 204, the requirements of Part 204. During this rulemaking, the Agency has engaged in dialogue with USEPA, Region 5 over this regulatory proposal. Given the highly nuanced aspects of the program, the apparently perfunctory nature of many of the proposed changes compared to the language of the federal blueprint could be disconcerting to USEPA and could imperil USEPA's approval of Part 203.

General Comments

Changing the Use of the Word "Shall" and "Must" as Found in 40 CFR 51.165

When commenting on IERG's drafts of proposed amendments to Part 203 and in the Agency's filings with the Board, the Agency's objective has been to mirror the language in the federal blueprint rules, in keeping with the goal of achieving consistency required by the Act. *Accord,* Section 9.1(a) of the Act. To this end, the Agency's comments included the use of the word "shall" in those instances in which it was reflected in the federal blueprint and the corresponding provision in existing Part 204. The recurring use of "shall" in the federal blueprint makes sense given that many aspects of the program, originating nearly 40 years ago, are the product of extensive guidance, regulatory development and enforcement litigation.

In reviewing the First Notice Version for Part 203, the Agency observes that the word "shall" as used throughout the regulatory proposal has been routinely replaced by a variety of other words. In many instances, "must" is used. In more limited instances, "shall" is replaced

would continue to be administered by the Agency pursuant to existing Part 203 as it has been historically done.

by "will"[23] or "does."[24] Without a guide to explain the basis for the change in usage, it can only be presumed that these changes are substantive in nature. Even if merely grammatical, these changes in wording are problematic.

For purposes of comparison, the Agency acknowledges that "shall" and "must" both impose an obligation to act. In this regard they are similar, although the former may also refer to an imminent (or likely) future action. "Shall" is also most often used in a formal legal setting, such as in the case of contracts or legislative/regulatory drafting. In this latter context, considerable litigation has arisen in recent years concerning whether the use of "shall" is meant as mandatory as opposed to permissive, usually being contrasted with another common auxiliary verb "may."

The frequent attention provided to these issues by courts have led some observers to conclude that "shall" should always be replaced with "must." *See, https://plainlanguage.gov/guidelines/conversational/shall-and-must/.* In addition to minimizing court challenges, such observers may also perceive the chance to reduce potential ambiguity, as "must" will not be confused with a requirement for future action. Several legal reference sources are cited by advocates for this change in word usage, including the Federal Register Document Drafting Handbook, Section 3 (https://www.archives.gov/federal-register/write/legal-docs/clear-

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[23] While the relevant provision of the federal blueprint, 40 CFR 51.165(b)(4), provides that "this section *shall* not apply to a major stationary source or major modification *with respect to* a particular pollutant . . ." (*Emphasis added*). The First Notice Version provides in Section 203.2430(b) [sic] (203.2500(b)) that "this section *will* not apply to a major stationary source or major modification *for* a particular pollutant . . ." (*Emphasis added*).

[24] The definition of "Actual Emissions" in the federal blueprint at 40 CFR 51.165(a)(1)(xii)(A) and the corresponding definition in 35 Ill. Adm. Code 204.210(a) provide that "except that this definition *shall not* apply for calculating. . ." (*Emphasis added*). In contrast, the First Notice Version provides in Section 203.1040(a) that "except that this definition *does not* apply for calculating. . ." (*Emphasis added*).

writing.html) and the Federal Aviation Administration, Notice 1000.36 – FAA Writing Standards, issued March 31, 2000 https://www.faa.gov/about/initiatives/plain_language/articles/mandatory).

If such a trend now exists, however, it is neither prescriptive nor a cure-all for litigation surrounding the legislative or regulatory intent of statutes and regulations. The desired word of choice does not imply future action, but it is also not singular in its meaning.[25] The imperfection of nearly all language, subject as it is to various origins and meanings, is no assurance that "must" will avoid the same pitfalls of "shall," i.e., comparison to "may." Moreover, judicial review of interpretative issues seldom involves the future action meaning of "shall," addressing instead the contextual comparisons of a statute or regulation and the effects of one interpretation or the other on the class of persons either impacted or protected by the same.[26]

In view of these considerations, the Agency recognizes that some jurisdictions use "must" in lieu of "shall,"[27] but nonetheless urges the Board to refrain from applying this practice in this proceeding. The state program should mirror the federal program's usage of "shall" and "must," assuring a level of consistency that will secure the necessary federal approval of a SIP submission. To do otherwise should require, in each instance, that the Board independently

[25] "Must" can mean something aspirational or expectant, rather than a duty or obligation, as in the statement "he simply must get a haircut." Such a statement does not assure predictability but, rather, implies a hope or preference for the intended result. *Accord.*, *https://www.merriam-webster.com/dictionary/must* ("must" be urged to: ought by all means to).

[26] The judicial test in Illinois to determine if a procedural command is mandatory, rather than presumptively directory, is whether 1) there is negative language prohibiting future action in the case of non-compliance with the command or 2) the right that the provision is designed to protect would generally be injured if given a directory reading. *See, In re M.I.*, 370 Ill. Dec. 785, 793 (Ill. May 23, 2013); *Lakewood Nursing and Rehabilitation Center, LLC, v. Dept. of Public Health*, 158 NE 2d 229, 236 (Ill. November 21, 2019).

[27] https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html

analyze the First Notice Version's use of the terms "must," "shall," "will" or "does" for consistency with the federal blueprint and explain the results of these analyses. Given that this comment extends to practically every section of the First Notice Version of Part 203, the Board should make explicit its consideration and supporting rationale for its word choice in each provision of Part 203 that would differ from the word used in the federal blueprint.[28]

The approach urged by the Agency will also avoid the inevitable difficulty, posed not only in the SIP review process but in future implementation of revised Part 203. To broadly illustrate, if the federal program uses "shall" in a provision that, based on a current or future USEPA guidance or court ruling, is interpreted as permissive and not mandatory, the Part 203 rules would yield the opposite result if "shall" is generally replaced with "must." Any argument that the grammatical changes in revised Part 203 rules better reflect the meaning or intent of the federal blueprint misses the mark, as the guidance document or court ruling would itself provide such meaning or intent.

If the Board is inclined to revise the word usage throughout the Part 203 rules, it must be pointed out that while USEPA interprets its PSD and NA NSR regulations differently with respect to pollutant applicability, many provisions of state rules especially definitions and requirements pertaining to PAL, are expected to contain identical or similar regulatory text.[29]

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[28] In many instances, the use of "must" in lieu of "shall" in the First Notice Version makes the regulatory requirement, at best, difficult to comprehend. *See*, Section 203.2530(a) of the First Notice Version ("The Agency *must* only issue a construction permit for a new major stationary source or major modification that is subject to the requirements of this Subpart if . . .") (*Emphasis added*).

[29] Such an approach makes sense given that the new source review program is a stationary source preconstruction permitting program that applies nationwide depending on the attainment status of the area in which the major source locates. Again, the PSD program applies in attainment and unclassifiable areas while the NA NSR program applies in nonattainment areas. Attainment status is determined on a pollutant-by-pollutant basis so an area can be attainment for some pollutants and nonattainment for other pollutants.

The First Notice Version is not consistent in its use of "shall" and "must" in Part 203 in what should often be identical requirements in existing, SIP-approved Part 204. A different word usage in Part 203 as compared to existing Part 204 would suggest a different meaning should be ascribed the two parts. Different words ordinarily communicate different meanings.

One striking example of the First Notice Version's use of "must" inconsistent with its use in the federal blueprint and in existing Part 204 appears in the definition of "Baseline Actual Emissions" in Section 203.1070. The relevant provisions in the federal blueprint provide:

1) The average rate *shall* include fugitive emissions to the extent quantifiable . . .

2) The average rate *shall* be adjusted downward to exclude any noncompliant emissions that occurred . . .

3) For a regulated NSR pollutant, when a project involved multiple emissions units, only one consecutive 24-month period *must* be used to determine . . .

4) The average rate *shall* not be based on any consecutive 24-month period . . .

40 CFR 51.165(a)(1)(xxxv)(A) (*Emphasis added*). Meanwhile, the First Notice Version provides no distinction between "must" and "shall," providing:

1) The average rate *must* include fugitive emissions to the extent quantifiable . . .

2) The average rate *must* be adjusted downward to exclude any noncompliant emissions that occurred . . .

3) For a regulated NSR pollutant, when a project involved multiple emissions units, only one consecutive 24-month period *must* be used to determine . . .

4) The average rate *must* not be based on any consecutive 24-month period . . .

(*Emphasis added*). A review of existing Part 204 with the First Notice Version reveals the opposite approach taken in the First Notice Version. Rather, the use of "shall" and "must" in the definition of "Baseline Actual Emissions" in Section 204.240 is consistent with the federal blueprint.

Another example of the issues posed by the First Notice would be the First Notice Version's use of "must" in proposed Section 203.1810(a)(1)(B) as compared to the federal blueprint.[30] The First Notice Version reads as follows:

> The total tonnage of increased emissions, in tpy, resulting from a major modification that *must* be offset *must* be determined by summing the difference between the allowable emissions after the modification, as defined under Section 203.1050, and the actual emissions before the modification, as defined under Section 203.1040, for each emissions unit.

(*Emphasis added*). Meanwhile the relevant provision of the federal blueprint provides:

> The total tonnage of increased emissions, in tons per year, resulting from a major modification that *must* be offset in accordance with section 173 of the Act *shall* be determined by summing the difference between the allowable emissions after the modification (as defined by paragraph (a)(1)(xi) of this section) and the actual emissions before the modification (as defined in paragraph (a)(1)(xii) of this section) for each emissions unit.

40 CFR 51.165(a)(3)(J) (*Emphasis added*). The First Notice Version fails to make a distinction between the mandatory obligations on the owner or operator of a source at which a major modification would occur to offset emissions and the manner in which the total tonnage of such offsets is to be determined as provided by the federal blueprint.

The Agency requests that the verb "shall" be used in revised Part 203, rather than the verb "must,"[31] so as to be consistent with the federal blueprint and Part 204. The verb "must" should only be used in revised Part 203 as it is used in the federal blueprint or Part 204. In this

[30] *See,* similar discrepancies in the First Notice Version's use of "must" in Section 203.1070(b)(3) as compared to 40 CFR 51.165(xxxv)(a)(1)(B)(3); in Section 203.1700(d) as compared to 40 CFR 51.165(a)(6)(iv); in Section 203.2320 as compared to 40 CFR 51.165(f)(5); in Section 203.2330(a) as compared to 40 CFR 51.165(f)(6)(i); in Section 203.2380(a)(2) as compared to 40 CFR 51.165(f)(11)(B); in Section 203.2390(d) as compared to 51.165(f)(12)(iv); and in Section 203.2390(e) as compared to 51.165(f)(12)(v).

[31] This request includes those instances where the First Notice Version did not include "shall" as it appears in the federal blueprint and Part 204 but rather used "will" or "does" in its place.

regard, the federal blueprint indicates that the verb "must" should be used in the following provisions of revised Part 203, as discussed below.

35 Ill. Adm. Code 203.1070(a)(3) - "Must" should be used. The relevant sentence in this provision may continue to read, "For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period *must* be used to determine the baseline actual emissions for the emissions units being changed." (*Emphasis added*).

35 Ill. Adm. Code 203.1070(b)(3) – "Must" should only be used when addressing the emission limitations that would be the basis of the downward adjustment of actual emissions. The relevant sentence in this provision should read, "The average rate *shall* be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source *must* currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period." (*Emphasis added*). Note: The word "shall" should be used when addressing downward adjustment of the actual emissions, consistent with the federal blueprint. In this regard, as the blueprint uses both "shall" and "must" in this provision, as well as in other provisions, it is appropriate to recognize that USEPA applies or uses a different meaning for these two terms.

35 Ill. Adm. Code 203.1070(b)(4) - "Must" should be used. The relevant sentence in this provision may continue to read, "For a regulated NSR pollutant, when a project involves multiple emission units, only one consecutive 24-month period *must* be used to determine the baseline actual emissions for all the emissions units being changed." (*Emphasis added*).

35 Ill. Adm. Code 203.1360 - "Must" should be used. The relevant sentence in this provision may continue to read, "For this Part, secondary emissions *must* be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions." (*Emphasis added*).

35 Ill. Adm. Code 203.1700(d) - "Must" should only be used when addressing how the annual reports required of the owner or operator of a subject electric utility steam generating unit are to be prepared. The provision should read, "If the unit is an existing electric utility steam generating unit, the owner or operator *shall* submit a report to the Agency within 60 days after the end of each year during which record *must* be generated under subsection (c) setting out the unit's annual emissions during the calendar year that preceded submission of the report." (*Emphasis added*). Note: The word "shall" should be used when addressing the requirement for submittal of such reports, consistent with the federal blueprint.

35 Ill. Adm. Code 203.1810(a)(1)(B) – When referring to the requirement that the owner or operator of a major source or major modification provide emission offsets, "must" should only be used. The provision should read, "The total tonnage of increased

emissions, in tpy, resulting from a major modification that *must* be offset *shall* be determined by summing the difference between the allowable emissions after the modification, as defined under Section 203.1050, and the actual emissions before the modification, as defined under Section 203.1040, for each emissions unit." (*Emphasis added*). Note: "Shall" should continue to be used when addressing how the amount of requested emission offsets is to be determined, consistent with the federal blueprint. (40 CFR 51.165(a)(3)(ii)(J).

35 Ill. Adm. Code 203.2320 - "Must" should only be used. The relevant sentence in the provision should read, "The Agency *must* address all material comments before taking final action on the permit." (*Emphasis added*). Note: The word "shall" should be used when addressing the requirement that PALs be established through a procedure that provides for public participation, consistent with the federal blueprint.

35 Ill. Adm. Code 203.2330(a) - "Must" should be used in only two places. The first is when specifying that only one consecutive 24-month period is to be used to determine baseline actual emissions for a PAL pollutant. The second is when specifying that emissions from units that have been permanently shutdown are to be subtracted from the PAL level. The relevant sentences in the provision should read, "When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period *must* be used to determine the baseline actual emissions for all existing emissions units" and "Emissions associated with units that were permanently shut down after this 24-month period *must* be subtracted from the PAL level." (*Emphasis added*). Note: In the three other places where "must" is used in this provision in the First Notice Version, the word "shall" should be used consistent with the federal blueprint.

35 Ill. Adm. Code 203.2330(b) – "Must" should be used. The provision may continue to read, "For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subsection (a), the emissions *must* be added to the PAL level in an amount equal to the potential to emit of the units." (*Emphasis added*).

35 Ill. Adm. Code 203.2340(d) – "Must" may be used. The provision may continue to read, "A requirement that emission calculations for compliance purposes *must* include emissions from startups, shutdowns and malfunctions." (*Emphasis added*).

35 Ill. Adm. Code 203.2380(a)(2) – "Must" should only be used when addressing the level of BACT or LAER with which the affected unit(s) must comply. The relevant sentence in this provision should read, "In such a case, the assumed control level for that emission unit *shall* be equal to the level of BACT or LAER with which that emissions unit *must* currently comply." (*Emphasis added*). Note: In the three other places where "must" is used in this provision in the First Notice Version, "shall" should be used consistent with the federal blueprint.

35 Ill. Adm. Code 203.2390(a)(1) – "Must" should be used. The provision may continue to read, "Each PAL permit *must* contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit *must* be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system *must* meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL." (*Emphasis added*).

35 Ill. Adm. Code 203.2390(a)(2) – "Must" should be used. The provision may continue to read, "The PAL monitoring system *must* employ one or more of the four general monitoring approaches meeting the performance requirements in subsection (b)(1) through (4) and *must* be approved by the Agency." (*Emphasis added*).

35 Ill. Adm. Code 203.2390(c)(3) – "Must" should be used. The provision may continue to read, "Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator *must* use the highest value of the range to calculate the PAL pollutant emissions unless the Agency determines there is site-specific data or a site-specific monitoring program to support another content within the range." (*Emphasis added*).

35 Ill. Adm. Code 203.2390(d)(1) – "Must" should be used. The provision may continue to read, "CEMS *must* comply with applicable Performance Specifications found in 40 CFR Part 60, appendix B (incorporated by reference in Section 203.1000); and" (*Emphasis added*).

35 Ill. Adm. Code 203.2390(d)(2) - "Must" should be used. This provision may continue to read, "CEMS *must* sample, analyze and record data at least every 15 minutes while the emissions unit is operating." (*Emphasis added*).

35 Ill. Adm. Code 203.2390(e)(1) - "Must" should be used. The provision may continue to read, "The CPMS or the PEMS *must* be based on current site-specific data demonstrating a correlation between the monitored parameter or parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and" (*Emphasis added*).

35 Ill. Adm. Code 203.2390(e)(2) - "Must" should be used. The provision should continue to read "Each CPMS or PEMS *must* sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Agency, while the emissions unit is operating; and" (*Emphasis added*).

35 Ill. Adm. Code 203.2390(g) – "Must" should be used. The provision should continue to read, "A source owner or operator *must* record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data unless

another method for determining emissions during the periods is specified in the PAL permit." (*Emphasis added*).

35 Ill. Adm. Code 203.2390(i) – "Must" should be used. The provision should continue to read, "Revalidation: All data used to establish the PAL pollutant *must* be revalidated through performance testing or other scientifically valid means approved by the Agency. Revalidation must occur at least every 5 years after issuance of the PAL. (*Emphasis added*).[32]

Changing the Use of the Word "Such" as Found in 40 CFR 51.165

In the First Notice Version of Part 203, the word "such" was either deleted or replaced in the text of IERG's proposal as previously agreed to by the Agency[33] with "that," "these," "the," "a," "this," or "like." The word "such" is typically used before a noun or a phrase to add emphasis; "such" typically stresses the type previously mentioned in a sentence. *Accord., Cambridge English Dictionary.* Consistent with the federal blueprint, "such" was proposed for use in revised Part 203 to emphasize the same nouns or phrases emphasized in the federal blueprint and, to the extent possible, Part 204. The Agency recommends that "such" be used in each instance that it was either deleted or replaced in the text of revised Part 203 for clarity and consistency with the federal blueprint (and Part 204). The following sections of Part 203 and Part 204 should be revised to be consistent with the federal blueprint (and Part 204).

- 35 Ill. Adm. Code 203.1040(b) – change "the" back to "such"
- 35 Ill. Adm. Code 203.1070(c) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1080 - change "these" back to "such"
- 35 Ill. Adm. Code 203.1130(b)(2)(A) - change "the" back to "such"

[32] *See,* discussion of proposed Section 35 Ill. Adm. Code 203.2390(i) and the First Notice Version's proposed spelling of "re-validation" and "re-validated."

[33] *See,* Attachment A to the Agency Second Comments wherein the Agency offered to the Board a redline of Part 203 to identify those revisions to existing Part 203 that would be acceptable to the Agency.

- 35 Ill. Adm. Code 203.1130(b)(2)(B) – include "such" where it was removed and change "the" back to "such"
- 35 Ill. Adm. Code 203.1130(b)(2)(C) - include "such" where it was removed, change "that" back to "such" and change "the" back to "such"
- 35 Ill. Adm. Code 203.1160(a) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1170(a) - change "the" back to "such" in two instances and change "where" to "such"
- 35 Ill. Adm. Code 203.1180 – change "the" back to "such"
- 35 Ill. Adm. Code 203.1210(a) – change "the" back to "such" in two instances
- 35 Ill. Adm. Code 203.1210(b) – include "such" where it was removed
- 35 Ill. Adm. Code 203.1220(c)(5)(A) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1220(c)(6) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1220(d)[34] – change "the" back to "such" in two instances and include "for such purposes" where it was removed
- 35 Ill. Adm. Code 203.1340(c) - change "if the" back to "provided that such"
- 35 Ill. Adm. Code 203.1360 - change "like" back to "such as"
- 35 Ill. Adm. Code 203.1370(b) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1370(c) - change "a" back to "such"
- 35 Ill. Adm. Code 203.1410(c)(2) – include "such" where it was removed
- 35 Ill. Adm. Code 203.1700 - change "the" back to "such"

[34] Consistent with existing SIP-approved 35 Ill. Adm. Code 203.207(e), IERG proposed "such" for use in 35 Ill. Adm. Code 203.1220(d) to emphasize the same nouns or phrases.

- 35 Ill. Adm. Code 203.1700(e)[35] - change "the" back to "such"
- 35 Ill. Adm. Code 203.1800(c) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1800(c)(3) – include "such" where it was removed
- 35 Ill. Adm. Code 203.1800(d) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1800(e) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1810(b)(1)(A) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1810(b)(2)(A) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1810(b)(2)(B) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1810(d)(2) - change "the" back to "such other" and change "the" back to "such"
- 35 Ill. Adm. Code 203.1810(f)(1)(A) - change "the" back to "such"
- 35 Ill. Adm. Code 203.1810(g)(3) – include "such" where it was removed in two instances and change "the" back to "for such purposes"
- 35 Ill. Adm. Code 203.2140 – change "the" back to "such" in three instances and change "this" back to "such"
- 35 Ill. Adm. Code 203.2270(a) – change "the" back to "such"
- 35 Ill. Adm. Code 203.2270(b) – change "the" back to "such"
- 35 Ill. Adm. Code 203.2270(c) – change "the" back to "such"
- 35 Ill. Adm. Code 203.2310(b) – change "the" back to "such" in two instances
- 35 Ill. Adm. Code 203.2330 – change "the" back to "such"

[35] In the same sentence, the First Notice Version took differing approaches to use of the term "such." In the first instance where the term "such" had been proposed for use by IERG, the First Notice Version removed "such" and replaced the term with "the." Meanwhile in the second instance, the First Notice Version kept the term "such." As proposed by the First Notice, the sentence would read, "*The* report must be submitted to the Agency within 60 days after the end of *such* year." (*Emphasis added*).

- 35 Ill. Adm. Code 203.2340(h) – change "the" back to "such"
- 35 Ill. Adm. Code 203.2360(a)(1) – include "such" where it was removed and change "the" back to "such"
- 35 Ill. Adm. Code 203.2370(a) – include "such" where it was removed
- 35 Ill. Adm. Code 203.2370(d) – include "in no case may any such" where it was removed
- 35 Ill. Adm. Code 203.2370(e) – change "the" back to "such"
- 35 Ill. Adm. Code 203.2380(a)(1) – change "the" back to "such"
- 35 Ill. Adm. Code 203.2380(a)(2) – change "this" back to "such a"
- 35 Ill. Adm. Code 203.2390(a)(1) – change "the" back to "such"
- 35 Ill. Adm. Code 203.2390(g) – change "the" back to "such"
- 35 Ill. Adm. Code 203.2400(a) - change "the" back to "such"
- 35 Ill. Adm, Code 203.2510 – change "the" back to "such"
- 35 Ill. Adm. Code 204.930(d)(2) – change "the" back to "such"

Changing the Use of the Phrase "Pursuant to" as Found in 40 CFR 51.165

In the First Notice Version of Part 203, the phrase "pursuant to" was replaced with "under."[36] The phrase "pursuant to" is typically used to mean to carry out in conformity with or according to. Meanwhile "under" typically means subject to the authority, control guidance or instruction. *Accord., Merriam-Webster Dictionary.* The use of "under" in lieu of "pursuant to" would not only change the meaning of the applicable provision but, in those instances that

[36] A review of the First Notice Version of Section 203.1210(b) reveals the opposite approach taken in the First Notice Version. *See*, Section 203.1210(b) ("The application of this limitation must not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard adopted by the USEPA *pursuant to* Section 111 of the CAA and made applicable *pursuant* to Section 9.1 of the Act."). (*Emphasis added*).

deviate from the federal blueprint, would necessarily be inconsistent with the federal blueprint. The Agency recommends that the following sections of Part 203 use "pursuant to" to be consistent with the federal blueprint:

- 35 Ill. Adm. Code 203.1180 (two instances)
- 35 Ill. Adm. Code 203.1220(c)(5)(A)
- 35 Ill. Adm. Code 203.1220(c)(6)
- 35 Ill. Adm. Code 203.1260(a)(1)
- 35 Ill. Adm. Code 203.1330 (two instances)
- 35 Ill. Adm. Code 203.1610(a) (two instances)
- 35 Ill. Adm. Code 203.1610(b)(3) (two instances)
- 35 Ill. Adm. Code 203.1370(b)
- 35 Ill. Adm. Code 203.1700(g) (two instances)
- 35 Ill. Adm. Code 203.1810(g)(2)
- 35 Ill. Adm. Code 203.2500(b)
- 35 Ill. Adm. Code 203.2410(a)(2)
- 35 Ill. Adm. Code 203.2410(b)
- 35 Ill. Adm. Code 203.2530(b)

Changing the Use of the Word "Notwithstanding" as Found in 40 CFR 51.165

In the First Notice Version of Part 203, the word "notwithstanding" was replaced with "despite." The words "notwithstanding" and "despite" are not synonymous. "Notwithstanding" indicates that the information that follows contradicts what was previously mentioned. Meanwhile, "despite" means "regardless of" or suggests resiliency in the face of adverse circumstances. *Accord.*, https://thecontentauthority.com/blog/notwithstanding-vs-despite.

Consistent with the federal blueprint, "notwithstanding" was proposed for use in revised Part 203 to emphasize that the provision that follows is contrary to or contradicts a provision that proceeds it. For clarity and consistency with the federal blueprint, the Agency recommends that "notwithstanding" be used in each instance in which it was used in the federal blueprint. In this regard, the following sections of Part 203 should be consistent with the federal blueprint using "notwithstanding," rather than "despite."[37]

- 35 Ill. Adm. Code 203.1090(b)
- 35 Ill. Adm. Code 203.1370(b)
- 35 Ill. Adm. Code 203.1370(c)
- 35 Ill. Adm. Code 203.1370(d)
- 35 Ill. Adm. Code 203.1370(e)
- 35 Ill. Adm. Code 203.1500(c)[38]
- 35 Ill. Adm. Code 203.2230
- 35 Ill. Adm. Code 203.2370(d)(3)
- 35 Ill. Adm. Code 203.2390(a)(3)
- 35 Ill. Adm. Code 203.2390(h)

[37] The Agency recommends that "notwithstanding" continue to be used in 35 Ill. Adm. Code 201.169(b)(2) rather than "despite" as proposed in the First Notice Version. Interestingly, the First Notice Version proposed to replace the word "notwithstanding" with "despite" in Section 201.169(b)(2), but no similar change was proposed in Section 204.290(b). Rather the First Notice Version continues to make use of "[n]otwithstanding" in the introductory sentence of Section 204.290(b). The Agency is not recommending any changes to the use of the word, "notwithstanding" in Section 204.290(b).

[38] While the language of 203.1500(c) is based on 40 CFR 51.118(b), the language "Despite subsection (b)" is new. For consistency with the use of the word "notwithstanding" elsewhere in the federal blueprint, the Agency recommends that the word "notwithstanding" be used rather than the word "despite."

Insertion of Commas and Removal of Commas

In the First Notice Version of proposed revisions to Part 203, in many instances, commas were either inserted or removed from the text of the regulatory proposal submitted by IERG. While the changes may appear to merely be corrections to punctuation, these changes would alter substantive provisions of revised Part 203 or create unnecessary ambiguity in language taken from the federal program (or existing Part 204) as it currently exists.

While commas are useful to set out words and phrases in a sentence that are informative or illustrative, the practice is not encouraged under common rules of punctuation if the result alters the basic meaning of the words or phrases. *See generally, Comma Abuse: A Comma Can Cause Trouble by its Absence, its Presence, its Incorrect Placement*, Jacquelyn H. Slotkin, Perspectives: Teaching Legal Research & Writing, Vol. 4, No. 1, Perspective: Teaching Legal Research and Writing, page 16 (Fall, 1995). In many instances, the revisions in the revised proposal purport to change certain words, phrases or clauses that are essential to program implementation or, conversely, introduce uncertainty into the meaning of words, phrases or clauses.

In this proceeding, insertion of a comma in relevant text will separate words or phrases to create a pause in sentence structure, giving the appearance that the words or phrases are modifying a preceding word, phrase or clause (noun or object) instead of being given their independent meaning. Conversely, removal of commas in relevant text will eliminate a pause in sentence structure that was meant only for illustrative purposes, resulting in a new or different meaning being given to mere modifying terms. Both types of revisions will hinder achievement of the mandate in Section 9.1(c) of the Act.

The reasoning or justification for these changes in the proposal is not self-evident, though it can be presumed they were meant to clarify and not change the substance of the proposal. Given the General Assembly's directive to meet the requirements of the congressional enactment and the inherent complexities of the federal NA NSR program, it is prudent to mirror the language of the federal NA NSR rules, commas and all, rather than risk contradictions or ambiguities in revised Part 203. As a consequence of these grammatical changes and others, the staff of the Agency has spent many hours reviewing the removal or insertion of commas in language taken from the federal blueprint (or existing Part 204) as was originally proposed. The Agency recommends the following commas be reinserted or deleted to be consistent with the language taken from the federal blueprint and/or the corresponding provision in Part 204:

- Section 203.1050(c) – reinsert comma after "permit condition" to read "permit condition, including . . . "
- Section 203.1070 – reinsert comma after "of a regulated NSR pollutant"
- Section 203.1090(b) - remove semicolon and replace with comma after "same surface site"
- Section 203.1130(b)(2)(B) – include a comma after "July 8, 1985"
- Section 203.1220(a) – remove comma after "any physical change" before the start of the phrase "or change in the method of operation." Note that the First Notice Version did not propose to insert a comma after the phrase "or change in the method of operation."
- Section 203.1240 – reinsert comma after "Section 203.1200(a)(3);" reinsert comma after "achieves a height;" and reinsert comma after "0.8 km from the stack"

- Section 203.1310 – remove a comma after "a physical change in" and remove a comma after "or change in the method of operation of"[39]
- Section 203.1350(c)(3) – include a comma after "is legally enforceable"
- Section 203.1370(b) – remove a comma after "a physical change in" and remove a comma after "or change in the method of operation of"[40]
- Section 203.1390 – remove comma after "or contractual obligations"

Parenthetical Plural Nouns

In addition, the following proposed sections should be revised to be consistent with the approach recently taken by the Joint Committee on Administrative Rules (JCAR) in 35 Ill. Adm. Code 204. Rather than utilizing a parenthetical "s" or "(s)" to denote the possibility of plural usage, JCAR preferred to refer to both the singular and plural versions of a word joined

[39] *See,* discussion of Section 203.1310, Project.

[40] The use of commas around "or change in the method of operation of" would create an appositive phrase where one should not be present. This is because it would indicate that the information contained inside the commas expands upon or clarifies the meaning of the preceding term. This is not correct. In the federal blueprint, the phrase, "or change in the method of operation," is not intended to clarify or modify the preceding phrase, "physical change in." In this regard, either a "physical change" or a "change in the method of operation" to a major stationary source that equals or exceeds 50 tpy of CO is significant for areas classified as serious nonattainment for CO. In the NSR program, "change in the method of operation" is not an alternative term for a "physical change." Rather, these two terms are used to refer to the two categories of changes at a stationary source that would potentially result in a major modification of the source. In this regard, as defined in the federal blueprint, 40 CFR 51.165(a)(1)(v)(A), "A major modification means any physical change or change in the method of operation of a major stationary source that would result in: . . . ."

by the conjunction "or." Consistent with such approach in 35 Ill. Adm. Code Part 204, the Agency proposes as follows:[41, 42]

- 35 Ill. Adm. Code 203.1200(a)(2)(B) – in two instances change "structure(s)" to "structure or structures"
- 35 Ill. Adm. Code 203.2170 – change "value(s)" to "value or values"
- 35 Ill. Adm. Code 203.2390(e)(1) – change "parameter(s)" to "parameter or parameters"

Typographical Error – Lower Case "s" When Referencing a Section of the CAA

In the following sections of the First Notice Version, an uppercase "S" was used when referring to a section of the CAA. Reference should be made to a lower case "s" when referring to a section of the CAA. (*Emphasis added*). *Accord., Style Manual, Illinois Administrative Code and Illinois Register*, page 17.

- Section 203.1060 – two instances
- Section 203.1210(b)
- Section 203.1220(c)(3)

[41] While JCAR did not remove the parenthetical "(s)" in Section 204.930(d)(2) to denote the possibility of plural usage during the prior Part 204 rulemaking, the Agency believes this was inadvertent. Consistent with JCAR's approach elsewhere in Part 204, the Agency proposes that "State(s)" be changed to "State or States" in Section 204.930(d)(2).

[42] As previously discussed, in its proposed approval of Part 204, USEPA noted that Section 204.1500(b) states, in part, "The Agency shall, *with the consent of the Governor*, determine that the source or modification may employ a system of innovative control technology if …" (*Emphasis added*). To be consistent with 40 CFR 51.166(s)(2), USEPA stated that the phrase "with the consent of the Governor" should be replaced with the phrase "with consent of the Governor(s) of other affected State(s)." 86 FR 22372, 22380 (April 28, 2021). In this instance, the Agency believes it would not be advisable to change "Governor(s)" to "Governor or Governors" and change "State(s)" to "State or States" because it would add unnecessary confusion to Section 204.1500(b) if it read "with consent of the Governor or Governors of other affected State or States." Such a change could suggest a state could have multiple governors.

- Section 203.1230(a)(2)
- Section 203.1230(c)(27)
- Section 203.1270
- Section 203.1280
- Section 203.1400
- Section 203.1410(a)
- Section 203.1440(b) - In addition, the extraneous "s" should be removed from "Section*s*." (*Emphasis added*).
- Section 203.1500(c)
- Section 203.1500(d)
- Section 203.1810(a)(1)
- Section 203.2430(a)

Miscellaneous Typographical Errors

In addition, the following typographical errors occurred when the regulatory proposal was converted into the First Notice Version. The Agency recommends that the errors be corrected.

- In Section 203.1090(b), the incorporation by reference should refer to Section 203.1000 rather than Section 203.1040.
- In Section 203.1160, the colon at the end of the second sentence should be replaced by a period.
- Interline spacing is missing between "H_g = good engineering practice stack height . . .," "H = height of nearby structure or structures . . ." and "L = lesser dimension" in

Section 203.1200, Good Engineering Practice. Two interline spaces should be added between these three lines in this definition.

- In Section 203.1610, a space should be included between the two words "issued" and "under" in "issuedunder."
- The font for the heading, Section 203.2150, Continuous Emissions Monitoring System, (CEMS), is not in bold type unlike all the other headings in Section 203. Similar to every other heading in Section 203, the header for Section 203.2150 should be in bold type to provide added emphasis to this header.
- Interline spacing is missing between the Source note for Section 203.2200, Plantwide Applicability Limitation (PAL), and the header for Section 203.2210, PAL Effective Date. An interline space should be added between the Source note of Section 203.2200 and the header for Section 203.2210.
- The First Notice Version makes reference to "Section 203.2430 Applicability" when the section number should be 203.2500 consistent with the identification of Section 203.2500, Applicability, in the Table of Contents.

Comments Particular to Specific Conditions

Part 201

Section 201.169 Special Provisions for Certain Operating Permits

The Agency observes that gratuitous changes were made in the First Notice Version for Part 201, including this section, but unlike Part 203 and Part 204, this provision in Part 201 has not been required to be SIP-approved by USEPA. Nevertheless, the Agency would still the urge the Board to consider how what might, at first blush, appear to be inconsequential changes would, in fact, change the substance of the provision. An example of changes to 35 Ill. Adm.

Code 201.169 that alter the substance of the existing regulation is in subsection (a)(2). For ease of reference, the First Notice Version proposed that:

> This Section only applies to sources that meet the requirements of subsection (a)(1) ~~above~~ and whose permit has not expired for~~pursuant to~~ a renewal request under subsection (b)(2) ~~of this Section~~. If this Section no longer applies to a source and its permit has not expired ~~pursuant to a renewal request~~ under subsection (b)(2) ~~of this Section~~, the terms and conditions of the permit must~~shall~~ remain in effect until the permit is superseded by a new or revised permit or is withdrawn.

In two instances, the First Notice Version made changes involving the phrase "pursuant to." In the first instance, the First Notice Version replaced "pursuant to" with "for" and in the second instance, the First Notice Version deleted "pursuant to." "Pursuant to" means to carry out in "conformity with or according to." While "for" is a preposition used to indicate the purpose or the intended goal. *Accord., Merriam-Webster Dictionary.* In each instance, the First Notice Version no longer indicates that the permit has not expired according to a renewal request.

Also problematic would be the deletion of the phrase "renewal request" in subsection (a)(2). By deleting this language, subsection (a)(2) of the First Notice Version ignores that subsection (b)(2) addresses both the expiration of a permit and the termination of a permit. By losing this distinction, subsection (a)(2) has suggested only one thing would be addressed in subsection (b)(2)[43] when there are, in fact, two potential events occurring, i.e., the termination of a permit and the expiration of a permit. For a terminated permit, the terms and conditions of the permit no longer remain in effect. This differs from a permit that expires 180 days after the

[43] Consistent with changes to regulatory language proposed elsewhere in the First Notice Version, "despite" replaces "notwithstanding" in subsection (b)(2). While discussed earlier in these comments, "notwithstanding" and "despite" are not synonymous. "Notwithstanding" indicates that the information that follows contradicts what was previously mentioned. Meanwhile, "despite" means "regardless of" or suggests resiliency in the face of adverse circumstances. *Accord.*, https://thecontentauthority.com/blog/notwithstanding-vs-despite

Agency sends a written request for a renewal. It also does not make sense to replace "shall" with "must" as this auxiliary verb was meant to be prospective in application.

In subsection (b)(4), the First Notice Version uses "like" in lieu of "such as, but not limited to." While the phrase "such as" is used to introduce an example or series of examples and the phrase "but not limited to" signifies that there may be more items besides those expressly listed, the term "like" typically means one of many that are similar to each other. *Accord., Merriam-Webster Dictionary.* By replacing the phrase "such as, but not limited to" with the term, "like," the First Notice Version would change the meaning of Section 201.169(b)(4) by restricting consideration to those items expressly listed rather than a mere listing of examples. The Agency recommends that Section 201.169 not deviate from existing Section 201.169 except to the extent additional reference is made to Part 204.

Section 201.175 Registration of Smaller Sources (ROSS)

In addition, the phrase "but is not limited to" is removed from "[t]his documentation may include, *but is not limited to,* annual material usage or emission rates;" from 35 Ill. Adm. Code 201.175(e)(3) in the First Notice Version. (*Emphasis added*). By removing the phrase "but not limited to," the First Notice Version would no longer indicate that there may be more items beyond "annual material usage or emission rates" as expressly listed in subsection (e)(3). The Agency recommends that Section 201.175 not deviate from existing Section 201.175 except to the extent additional reference is made to Part 204.

Part 202

Section 202.306 Standards for Issuance

The proposed changes to Section 202.306 in the First Notice Version illustrate a problem with the use of "must" in lieu of "shall." The First Notice Version provides that the "Agency

~~shall~~ *must* issue a permit containing an ACS if, and only if, the permit applicant demonstrates that:" (*Emphasis added*). By using "must" instead of "shall," the First Notice Version conflicts with the procedures applicable to the issuance of permits as set forth in Section 39(a)[44] and 39.1[45] of the Act.[46]

Further, by using "must" in this context, the First Notice Version would indicate that the Agency is only required to issue an ACS if the criteria of Section 202.306 are met. However, the Agency would still be allowed to issue an ACS even if these criteria are not met. In other words, the term "must" indicates when the Agency is legally obligated to issue an ACS but leaves open the issuance of an ACS by the Agency even if these criteria are not met. This ambiguity is not present in existing Section 202.306 with the use of the term "shall."

[44] Section 39(a) of the Act, provides: "it *shall* be the duty of the Agency to issue such a permit upon proof by the applicant that the facility . . . will not cause a violation of this Act or of regulations hereunder" and "[t]he Agency *may* impose such other conditions as may be necessary to accomplish the purposes of this Act, and are not inconsistent with the regulations promulgated by the Board." (*Emphasis added*).

[45] Section 39.1 of the Act, provides:

> The Agency *shall* issue such a permit or permits upon a finding that:
>
> (1) the alternative control strategy in the permit provides for attainment in the aggregate, with respect to each regulated contaminant, of equivalent or less total emissions than would otherwise be required by Board regulations for the sources subject to such permit; and
>
> (2) that air quality will otherwise be maintained consistent with Board regulations.

(*Emphasis added*).

[46] Section 9.3 of the Act, Alternative Control Strategies, provides that the Board shall adopt regulations establishing a permit program pursuant to Section 39.1 of the Act. 415 ILCS 5/9.3. Section 39.1(b) of the Act provides that such permits shall be processed pursuant to Section 39(a) of the Act. 415 ILCS 5/39.1(b).

Part 203[47]

Section 203.100 Effective Dates

For purposes of Section 203.100, the Board found that it was "convinced that IEPA's proposed language for Section 203.100 is appropriate and necessary to address the transition from the existing Subparts A thru H to proposed new Subparts I thru R" concluding that "the Board adopts IEPA's recommended language for first notice." Order at page 12; *see also,* Order at page 18. While the Board generally reflected this finding in Section 203.100, the First Notice Version neglected to refer to "the full" approval of Subparts I through R of this Part. As previously explained, rather than approving revised Part 203 in its entirety, it is possible that the USEPA could elect to provide only partial approval of revised Part 203, disapproving it, in part. The Agency went on to explain:

> If the USEPA were to partially approve and partially disapprove revised Part 203 or were to disapprove revised Part 203, such action could cause a conflict with the statutory definition of "nonattainment new source review (NA NSR) permit" in Section 3.298 of the Illinois Environmental Protection (Act), 415 ILCS 5/3.298 (2020). Consistent with the mandate of the Clean Air Act that requires states to develop and submit SIPs to USEPA for its approval, this definition provides that a state NA NSR permit may only be issued once the state NA NSR program has been approved as part of Illinois's SIP. The Clean Air Act's NA NSR requirements are among the requirements that must be addressed in a state SIP. 42 U.S.C. § 7410(a)(2)(C) & (1).
>
> IERG's proposed language suggests that a NA NSR permit could be issued consistent with provisions of [revised] Part 203 that had not yet been SIP approved and, yet such permit would meet Illinois' definition of an NA NSR permit. This is not the case. If any part of a construction permit would be issued pursuant to a provision in [revised] Part 203 that had not been approved by the USEPA, this permit would not meet the definition of a NA NSR permit in Illinois . . .

[47] Unfortunately, there is not time to address in detail each point in the First Notice Version where the proposed change in word usage would alter the requirements of Part 203 compared to the requirements in the federal blueprint. To the extent that these changes may alter Part 203 in a way that is contradictory to USEPA's requirements in 40 CFR 51.165, they threaten disapproval of revised Part 203 as part of Illinois' SIP. In any case, unexplained changes to Part 203 may act to complicate and delay USEPA's review of revised Part 203. In each instance that the First Notice Version would deviate from the federal blueprint, the Board should make explicit its consideration and supporting rationale for deviating from the federal blueprint.

Illinois EPA's Supplement to Its Second Set of Answers, Comments and Recommendations for Additional Revisions, dated October 20, 2022 (Agency's Supplement to Second Comments). Consistent with the Agency's previous explanation and the Order, the Agency requests that the phrase, "the full," be included in Sections 201.100(a) and (b) to read, in part, "the effective date of *the full* approval of . . ." (*Emphasis added*).

Section 203.1010 Abbreviations and Acronyms

Section 203.1010 identifies those abbreviations and acronyms necessary to implement this part consistent with regulatory practice in Illinois.

The Agency recommends including the abbreviation for British Thermal Units (Btu) in Section 203.1010 given the use of this abbreviation in Sections 203.1230(c)(21) and (26) and, as will be discussed later by the Agency, given its recommended use in Section 203.1350(c)(1).

Given the Board's finding that interprecursor trading for emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors would not be authorized by Part 203, the Board stated it would remove the abbreviation for interprecursor trading from Section 203.1010. The Agency requests that the abbreviation for interprecursor trading, IPT, be removed from proposed Section 203.1010.

Section 203.1040 Actual Emissions[48]

Section 203.1040 provides a definition for "Actual emissions." Subsection (a) provides that "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subsections (b) and (c). Subsection (b) provides that actual emissions as of a particular date equal the average rate that the unit actually emitted the pollutant during the preceding consecutive 24-month period, unless the Agency determines another earlier time period is more representative of normal source operation.

[48] 40 CFR 51.165(a)(1)(xii) and 35 Ill. Adm. Code 203.104.

Subsection (b) generally details the data necessary to calculate a unit's actual emissions. This definition, as proposed by IERG, was generally based on the federal blueprint at 40 CFR 51.165(a)(1)(xii). However, paragraph (B) was revised for purposes of Section 203.1040(b), in part, to clarify what information may be submitted by the applicant to support the consideration of emissions data the unit actually emitted from a different 24-month period of time than the preceding consecutive 24-month period. *See, IERG's Statement of Reasons,* dated August 16, 2021. Such language was based on the language of existing 35 Ill. Adm. Code 203.104(a) providing as follows:

> The Agency shall allow the use of a different time period upon a demonstration by the applicant to the Agency that the time period is more representative of normal source operation. Such demonstration may include, *but need not be limited to,* operating records or other documentation of event or circumstances indicating that the preceding two years is not representative of normal source operations.

(*Emphasis added*). The First Notice Version eliminated the phrase "*but need not be limited to. . .* ." By eliminating this phase, the First Notice Version no longer indicates that there may be other possible information to be considered in any such demonstration beyond those specifically listed. Instead, the First Notice Version would restrict the consideration to those items specifically listed. By eliminating the phrase "*but need not be limited to . . .*" the First Notice Version would deviate from existing SIP-approved 35 Ill. Adm. Code 203.104(a). The Agency requests that the definition of "Actual emissions" in Section 203.1040(b) be consistent with both the federal blueprint at 40 CFR 51.165(a)(1)(xii) and existing 35 Ill. Adm. Code 203.104(a).

Section 203.1050 Allowable Emissions[49]

This section provides the definition for "Allowable emissions" as the emissions rate of a stationary source calculated using the maximum rated capacity of the source unless the source is

[49] 40 CFR 51.165(a)(1)(xi) and 35 Ill. Adm. Code 204.230.

subject to federally enforceable limits and the most stringent of subsections (a) through (c). Subsection (a) of the First Notice Version deviates from the federal blueprint at 40 CFR 51.165(a)(1)(xi)(A) and 35 Ill. Adm. Code 204.230(a) by removing "set forth" from "[t]he applicable standards *set forth* in 40 CFR Parts 60, 61, 62 and 63." (*Emphasis added*).

Section 203.1070 Baseline Actual Emissions[50]

This section provides a definition for "Baseline actual emissions." "Baseline actual emissions" means the rate of emissions of a regulated NSR pollutant determined consistent with subsections (a) through (d). Deviating from the federal blueprint at 40 CFR 51.165(a)(1)(xxxv), the First Notice Version reads "'Baseline actual emissions' means the rate of emissions in tons per year, of a regulated NSR pollutant determined in accrding [sic] to subsections (a) through (d)." To be consistent with the federal blueprint (and the corresponding definition in Part 204, Section 204.240), the Agency requests that this sentence read as follows: " 'Baseline actual emissions' means the rate of emissions, in tons per year, of a regulated NSR pollutant, *as* determined in *accordance with* subsections (a) through (d)."

In subsection (b)(3), the parenthetical, "(incorporated by reference in Section 203.1000)" should be included after the following phrase to read "or promulgated under 40 CFR Part 63 (incorporated by reference in Section 203.1000) . . ."

Subsection (c) provides that for a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase from the unit's initial construction and operation shall equal zero; and thereafter, shall equal the unit's potential to emit. In subsection (c), the First Notice Version did not include "purposes of" in the phrase "the baseline actual emissions for *purposes of* determining the . . ." nor did the First Notice Version include "for all other

[50] 40 CFR 51.165(a)(1)(xxxv) and 35 Ill. Adm. Code 204.240.

purposes" in the phrase "[t]hereafter, *for all other purposes,* it shall equal . . ." (*Emphasis added*). The phrase "for purposes of" or the phrase "for all other purposes" is typically used to explain the goal or purpose of something. In both instances. the First Notice Version diverges from the federal blueprint at 40 CFR 51.165(a)(1)(xxxv)(C) and 35 Ill. Adm. Code 204.240(c). For consistency with both, the Agency requests that subsection (c) read as follows:

> c) For a new emissions unit, the baseline actual emissions *for purposes* of determining the emissions increase that will result from the initial construction and operation of ~~the~~ *such* unit *shall* ~~must be~~ equal ~~to~~ zero. ~~and t~~Thereafter, *for all other purposes, it shall* ~~must be~~ equal ~~to~~ the unit's potential to emit.

(*Emphasis added*).

In two instances in subsection (d), the First Notice Version replaces "in accordance with" with "according to." This is inconsistent with the usage of "in accordance with" in the federal blueprint, 40 CFR 51.165(a)(1)(xxxv)(D). This approach not only deviates from the federal blueprint but deviates from the corresponding provision in Section 204.240(d). The Agency recommends that "in accordance with" be included for consistency with the federal blueprint and the corresponding provision in Part 204.

Section 203.1080 Begin Actual Construction[51]

This section provides a definition of "Begin actual construction." "Begin actual construction" generally means the initiation of physical on-site construction activities on an emissions unit that are permanent in nature. Regarding a change in method of operation, this term refers to on-site activities that mark the initiation of the change excluding preparatory activities. The First Notice Version does not include the phrase "but are not limited to" in the following phrase "*[s]uch* activities include, *but are not limited to . . .*" (*Emphasis added*). By removing the phrase "but are not limited to," the First Notice Version no longer signifies that

[51] 40 CFR 51.165(a)(1)(xv) and 35 Ill. Adm. Code 204.270.

there may be more items besides those expressly listed in Section 203.1080. Further, the First Notice Version replaces the phrase "[w]ith respect to" with the term "[f]or." The phrase "with respect to" is used to introduce a topic or make reference to a topic that is relevant to the main subject. *Accord., Merriam-Webster Dictionary.* The First Notice Version would change the meaning of Section 203.1080 and would deviate from the federal blueprint, 40 CFR 51.165(a)(1)(xv), and from 35 Ill. Adm. Code 204.270.

Section 203.1090 Building, Structure, Facility or Installation[52]

Subsection (a) provides that "Building, structure, facility or installation" means all pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Subsection (b) provides that notwithstanding subsection (a), for purposes of onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, a different definition for building, structure or installation applies. The First Notice Version does not include the phrase "but is not limited to" in the following phrase "[s]hared equipment includes, *but is not limited to, . . .*" (*Emphasis added*). By removing the phrase "but is not limited to," the First Notice Version no longer signifies that there may be more equipment besides that expressly listed in subsection (b). The First Notice Version would change the meaning of Section 203.1090(b) and would deviate from the federal blueprint, 40 CFR 51.165(a)(1)(ii)(B), and from 35 Ill. Adm. Code 204.290(b).

[52] 40 CFR 51.165(a)(1)(ii) and 35 Ill. Adm. Code 204.290.

Section 203.1130 Dispersion Technique[53]

In the First Notice Version, changes were proposed to the definition of "Dispersion technique" in Section 203.1130, that would differ from what should be an identical definition of "Dispersion technique" in Section 204.350. Given both definitions are based on the definition of "Dispersion technique" in the federal blueprint at 40 CFR 51.100(hh), the definition of "Dispersion technique" in Section 203.1130 should be identical to the definition of "Dispersion technique" in Section 204.350. If not, the suggestion would necessarily be that there is a different meaning associated with the term "Dispersion technique" in Section 203.1130 versus what should be the corresponding definition in Section 204.350. The Agency requests that the definition of "Dispersion technique" in Section 203.1130 be consistent with both the federal blueprint at 40 CFR 51.100(hh) and what should be the same definition at Section 204.350 with the exception of cross references to the applicable sections of Part 204. The language would read as follows:

Section 203.1130 Dispersion Technique

a) "Dispersion technique" means any technique that attempts to affect the concentration of a pollutant in the ambient air by:

1) Using the portion of a stack that exceeds good engineering practice stack height;

2) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

3) Increasing final exhaust gas plume rise by[54]:

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[53] 40 CFR 51.100(hh) and 35 Ill. Adm. Code 204.350.

[54] Section 203.1130(a)(3) would provide the definition for "Dispersion technique" to mean any technique that attempts to affect a pollutant's concentration in the ambient air by increasing final exhaust gas plume rise by manipulating various parameters or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The First Notice Version for Part 204 split the third type of "dispersion technique" definition, i.e., manipulation of exhaust gas flow rate as it affects dispersion, into Section 204.350(a)(3)(A) through (C). For consistency between Part 203 and Part 204, the Agency is

A) Manipulating source process parameters, exhaust gas parameters, or stack parameters;

B) Combining exhaust gases from several existing stacks into one stack; or

C) Other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

b) "Dispersion technique" does not include:

1) The reheating of a gas stream, following use of a pollution control system, for *the purpose of* returning the gas to the temperature at which it was originally discharged from the stationary source generating the gas stream;

2) The merging of exhaust gas streams when:

A) The source owner or operator demonstrates that the stationary source was originally designed and constructed with *such* merged gas streams;

B) After July 8, 1985, *the* merging is part of a change in operation at the stationary source that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of dispersion techniques *shall* apply only to the emission limitation for the pollutant affected by the change in operation; or

C) Before July 8, 1985, *such* merging was part of a change in operation at the stationary source that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. When there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Agency *shall* presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by *such* intent, the Agency *shall* deny credit for the effects of the merging in calculating the allowable emissions for the source;

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recommending the same split to the third type of "dispersion technique" definition, i.e., increasing final exhaust gas plume rise as it affects dispersion, into Section 203.1130(a)(3)(A) through (C).

3) Smoke management in agricultural or silvicultural prescribed burning programs;

4) Episodic restrictions on residential wood burning and open burning; or

5) Techniques under subsection (a)(3) that increase final exhaust gas plume rise when the resulting allowable emissions of SO_2 from the stationary source do not exceed 5,000 tpy.

(*Emphasis added*).

Section 203.1150 Emission Offset[55]

The First Notice Version replaces "in accordance with" with "in compliance with" in the definition of "Emission offset" inconsistent with the use of "in accordance with" in the existing definition of "Emission offset" in 35 Ill. Adm. Code 203.121. Given the phrase "in accordance with" has been SIP-approved in this context by USEPA, the Agency would recommend the phrase "in accordance with" be used in the corresponding definition of "Emission offset" in Section 203.1150.

Section 203.1170 Excessive Concentration[56]

In the First Notice Version, changes were proposed to the definition of "Excessive concentration" in Section 203.1170, that would differ from what should be an identical definition of "Excessive concentration" in Section 204.380. Given both definitions are based on the definition of "Excessive concentration" in the federal blueprint at 40 CFR 51.100(kk), the definition of "Excessive concentration" in Section 203.1170 should be identical to the definition of "Excessive concentration" in Section 204.380. If not, the suggestion would necessarily be that there is a different meaning associated with the term "Excessive concentration" in Section 203.1170 versus what should be the same definition in Section 204.380. The Agency requests

[55] 35 Ill. Adm. Code 203.121.

[56] 40 CFR 51.100(kk) and 35 Ill. Adm. Code 204.380.

that the definition of "Excessive concentration" in Section 203.1170 be consistent with both the federal blueprint at 40 CFR 51.100(kk) and what should be the same definition at Section 204.380 with the exception of cross references to the applicable sections of Part 204. The language would read as follows:

Section 203.1170 Excessive Concentration

"Excessive concentration" *is defined* for *the purpose of* determining good engineering practice stack height under Section 203.1200(a)(3) *and* means:

a) For sources seeking credit for stack height exceeding that established under Section 203.1200(a)(2), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features *that* ~~which~~ individually is at least 40 percent in excess of the maximum concentration experienced in the absence of ~~the~~ *such* downwash, wakes, or eddy effects and *that* ~~which~~ contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to this Part, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features ~~which~~ *that* individually is at least 40 percent in excess of the maximum concentration experienced in the absence of ~~such~~ *the* downwash, wakes, or eddy effects and greater than an ambient air increment under Section 204.900. The allowable emission rate to be used in making demonstrations of excessive concentration ~~must~~ *shall* be prescribed by the NSPS that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. ~~Where~~ *When those* demonstrations are approved by the Illinois EPA, an alternative emission rate ~~must~~ *shall* be established in consultation with the source owner or operator.

b) For sources seeking credit for increases in existing stack heights up to the heights established under Section 203.1200(a)(2), either*:*

1) ~~(i) a~~*A* maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subsection (a), except that the emission rate specified by the SIP (or, in the absence of such a limit, the actual emission rate) ~~must~~ *shall* be used*;*~~,~~ or

2) ~~(ii) t~~*T*he actual presence of a local nuisance caused by the existing stack, as determined by the Agency; and

c) For sources seeking credit for a stack height determined under Section 203.1200(a)(2) when ~~re~~ the Agency requires the use of a field study or fluid

> model to verify good engineering practice stack height, for sources seeking stack height credit based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit based on the aerodynamic influence of structures not adequately represented by the equations in Section 203.1200(a)(2), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(*Emphasis added*).

Section 203.1180 Federally Enforceable[57]

Section 203.1180 provides that "Federally enforceable" means all limitations and conditions that are enforceable by USEPA including those requirements developed under particular programs, i.e., federal regulations, within the SIP, and certain permit programs. The First Notice Version replaces "adherence to" with "compliance with" in Section 203.180 inconsistent with the usage of "adherence to" in 40 CFR 51.165(a)(1)(xiv). This approach not only deviates from the federal blueprint but could cause unnecessary confusion to the extent deviates from the corresponding definition in Section 204.400. The Agency recommends that "adherence to" be included in Section 203.1180 for consistency with the federal blueprint and the corresponding requirement in Part 204 to read as follows:

> "Federally enforceable" means all limitations and conditions which are enforceable by the USEPA, including those requirements developed ~~under~~ *pursuant to* 40 CFR Parts 60, 61, 62 and 63 (incorporated by reference in Section 203.1000), requirements within the SIP, any permit requirements established pursuant to 40 CFR 52.21 (incorporated by reference in Section 203.1000) or this Part or under regulations approved ~~under~~ *pursuant to* 40 CFR Part 51, Subpart I (incorporated by reference in Section 203.1000), including operating permits issued under an USEPA-approved program that is incorporated in the SIP and expressly requires ~~compliance with~~ *adherence to* any permit issued under ~~the~~ *such* program.

(*Emphasis added*).

[57] 40 CFR 51.165(a)(1)(xiv) and 35 Ill. Adm. Code 204.400.

Section 203.1200 Good Engineering Practice[58]

While the Board's Section-by-Section Summary addressing Section 203.1200 included a reference to preconstruction approvals or permits required under 40 CFR Part 51 in addition to Part 52 in the definition of "Good engineering practice," this reference was not included in the language of the First Notice Version. Such change would be consistent with the Agency's proposed revision to the corresponding definition of "Good engineering practice" in Part 204. Agency Comments at pages 8 – 9. For stacks in existence on January 12, 1979, an owner or operator could have obtained any necessary preconstruction approvals or permits required under 40 CFR Parts 51 and 52. The Agency requests that the reference to preconstruction approvals or permits required under 40 CFR Part 51 be included in this definition.

In the First Notice Version, changes were also proposed to the definition of "Good engineering practice" in Section 203.1200, that would differ from what should be an identical definition of "Good engineering practice" in Section 204.420. Given both definitions are based on the definition of "Good engineering practice" in the federal blueprint at 40 CFR 51.100(ii), the definition of "Good engineering practice" in Section 203.1200 should be identical to the definition of "Good engineering practice" in Section 204.420. If not, the suggestion would necessarily be that there is a different meaning associated with the term "Good engineering practice" in Section 203.1200 versus what should be the corresponding definition in Section 204.420. The Agency requests that the definition of "Good engineering practice" in proposed Section 203.1200 be identical to the existing definition of "Good engineering practice" in Section 204.420.

[58] 40 CFR 51.100(ii) and 35 Ill. Adm. Code 204.420.

Section 203.1210 Lowest Achievable Emission Rate[59]

This Section provides a definition for "Lowest achievable emission rate." Without accompanying explanation, the First Notice Version proposes to replace the phrase "[i]n no event shall the application of this term . . ." as it appears in 40 CFR 51.165(a)(1)(xiii) with the phrase "[t]he application of this limitation must not . . ." in subsection (b). To the extent the definition of "Lowest achievable emission rate" includes changes that are not consistent with the federal blueprint this may jeopardize USEPA's approval of revised Part 203 as a SIP revision. The Agency requests that subsection (b) be consistent with 40 CFR 51.165(a)(1)(xiii)(B).

Section 203.1220 Major Modification[60]

Section 203.1220 provides the definition for "Major modification." Subsection (a) generally provides that "Major modification" would mean any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant; and a significant net emissions increase of that pollutant from the major stationary source. In the beginning of subsection (a), the First Notice Version reads "Except as *stated*" rather than "Except as *provided.*" (*Emphasis added*). The term "provided" is typically used to mean on condition that or with the understanding that. The term "stated" typically means to set down explicitly or to declare. *Accord., Merriam-Webster Dictionary.* The replacement of the term "provided" by the term "stated" at the beginning of subsection (a) in the First Notice Version would change the meaning of subsection (a).

In subsection (a), the First Notice Version includes a comma after the phrase "any physical change." For consistency with 40 CFR 51.165(a)(1)(v)(A), the Agency requests the

[59] 40 CFR 51.165(a)(1)(xiii) and 35 Ill. Adm. Code 203.301(a)(2).

[60] 40 CFR 51.165(a)(1)(v) and 35 Ill. Adm. Code 203. 207 and 204.490.

removal of the comma after this phrase. In addition, the First Notice Version includes a cross reference to Section 203.1370, "(as defined in Section 203.1370)" after "significant net emission increase." However, Section 203.1370 does not provide a definition of "significant net emission increase" but rather provides a definition of "Significant." The Agency recommends removing the cross reference to Section 203.1370 for consistency with the federal blueprint, 40 CFR 51.165(a)(1)(v)(A)(2).

In subsection (c), seven activities are specified that are not considered a physical change or a change in the method of operation. In subsection (c)(5)(A), the First Notice Version included language that would be inconsistent with the federal blueprint, 40 CFR 51.165(a)(1)(v)(C)(5)(*i*). The Agency recommends that subsection (c)(5)(A) in the definition be consistent with the definition of "Major modification" in the federal blueprint and state as follows:

> 5) Use of an alternative fuel or raw material by a stationary source which:
>
> A) The source was capable of accommodating before December 12, 1976, unless *such* change would be prohibited under any federally enforceable permit condition *which was* established after December 12, 1976, *pursuant to* 40 CFR 52.21, 35 Ill. Adm. Code Part 204, this Part, or 35 Ill. Adm. Code 201.142 or 201.143: or

(*Emphasis added*).

In subsection (d), the First Notice Version utilizes the preposition "for" in lieu of "[i]n the case of" inconsistent with the use of "in the case of" in existing 35 Ill. Adm. Code 203.207(e). In addition, the First Notice Version replaces the term "whenever" in the phrase "*whenever* any change at that source results. . . ." with the term "if" in subsection (d) inconsistent with existing 35 Ill. Adm. Code 203.207(e). Given existing Section 203.207(e) is SIP-approved by USEPA,

the Agency recommends following the language of existing Section 203.207(e) as closely as possible unless an express reason exists to deviate from its language.

Subsection (f) of the First Notice Version provides that this definition of "Major modification" does not apply to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for this pollutant. In this subsection, the First Notice Version does not contain the phrase "with respect" inconsistent with the federal blueprint, 40 CFR 51.165(a)(1)(v)(D). The phrase "with respect" identifies a context in which the definition of "Major modification" is not applicable. In this regard, it introduces a new point not related to the previous discussion, i.e., that this definition does not apply for purposes of a pollutant for which a PAL has been established and the owner or operator is complying with the PAL. The Agency recommends that subsection (f) in the definition of "Major modification" be consistent with the federal blueprint.

Section 203.1240 Nearby[61]

In the First Notice Version, changes were proposed to the definition of "Nearby" in Section 203.1240, that would differ from what should be an identical definition of "Nearby" in Section 204.530. Given both definitions are based on the definition of "Nearby" in the federal blueprint at 40 CFR 51.100(jj), the definition of "Nearby" in Section 203.1240 should be identical to the definition of "Nearby" in Section 204.530. If not, the suggestion would necessarily be that there is a different meaning associated with the term "Nearby" in Section 203.1240 versus what should be the same definition in Section 204.530. The Agency requests that the definition of "Nearby" in Section 203.1240 be consistent with both the federal blueprint at 40 CFR 51.100(jj) and what should be the same definition at Section 204.530 with the

[61] 40 CFR 51.100(jj) and 35 Ill. Adm. Code 204.530.

exception of cross references to the applicable sections of Part 204. The language would read as follows:

Section 203.1240 Nearby

"Nearby," *with respect to* a specific structure or terrain feature:

a) For *purposes of* applying the formula provided in Section 203.1200*(a)(2)*, means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (½ mile); and

b) For conducting demonstrations under Section 203.1200(a)(3), means not greater than 0.8 km (½ mile), except that a portion of a terrain feature may be considered to be nearby *if it* falls within a distance of up to 10 times the maximum height of the feature, not to exceed 2 miles if such feature achieves a height, 0.8 km from the stack, that is at least 40 percent of the good engineering practice stack height determined by the formula provided in Section 203.1200(a)(2)(B) or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(*Emphasis added and for commas in* yellow).

Section 203.1260 Net Emissions Increase[62]

Section 202.1260 provides the definition for "Net emissions increase." There is a long line of national precedent that relies upon the specific language of the definition of this term in the federal blueprint. Any unexplained deviation from the language of the federal blueprint, including replacement of the auxiliary verb "shall" with "must" as occurred in the First Notice Version would create ambiguity and potential confusion. In subsection (a), the First Notice Version replaced the phrase "with respect to" with the term "for" in the following phrase "*with respect to* any regulated NSR pollutant." (*Emphasis added*). While this phrase, "with respect to" may initially appear extraneous, this phrase clarifies the context in which the definition of "net emissions increase" is to be considered. In subsection (a)(1), the First Notice Version replaced

[62] 40 CFR 51.165(a)(1)(vi) and 35 Ill. Adm. Code 203.208 and 204.550.

the phrase "pursuant to" with the term "under." (The phrase "pursuant to" means to carry out in conformity with or according. While "under" typically means subject to the authority, control guidance or instruction). The Agency recommends that subsection (a) be made consistent with the federal blueprint.

In addition, as related to the First Notice Version subsection (b)(3), the relevant provision of the federal blueprint at 40 CFR 51.165(a)(1)(vi)(E) provides "[a] decrease in actual emission is creditable *only* to the extent that:" (*Emphasis added*). The language in the First Notice Version would not state "creditable only to the extent that" but rather would refer to "creditable to the extent that." The Agency recommends that "only" be included in subsection (b)(3) for clarity and consistency with the federal blueprint (and the corresponding provision in Section 204.550(e)). The Agency recommends that the definition of "Net emissions increase" be consistent with the federal blueprint.

Section 203.1310 Project[63]

The First Notice Version would define "Project" to mean "a physical change in, or change in the method of operation of, an existing major stationary source." The use of commas around "or change in the method of operation of" suggests that the information contained inside the commas does not alter the basic meaning of the phrase "a physical change." This is not correct. The information contained inside the phrase, "or change in the method of operation," is a separate meaning for the term "Project" and is necessary to define "Project." Placing the phrase "or change in the method of operation" within commas in this definition would alter the meaning of this far-reaching definition.[64] In this regard, either a "physical change" to an existing

[63] 40 CFR 51.165(a)(1)(xxxix).

[64] The First Notice Version included the same problematic phrase, i.e., or change in the method of operation, in Sections 203.1220(a) and 203.1370(b). However, the First Notice Version did not insert

major stationary source or a "change in the method of operation" of an existing major stationary source is a "Project." A "change in the method of operation" is not an alternative term for a "physical change." The Agency recommends that commas not be included around the phrase "or change in the operation of" in the definition of "Project" recognizing that a "project" can consist of a "physical change in" or "a change in the method of operation" or both.

Section 203.1320 Projected Actual Emissions[65]

Section 204.600 provides a definition of "Projected actual emissions." The portion of the federal blueprint that is the origin of subsection (b) provides that in performing any analysis of the projected emissions that result from the proposed change, the owner or operator of the major

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commas around the phrase "or change in the method of operation" where it appears elsewhere in Part 203, including 203.1120, 203.1220(c) and (e), 203.1260(a)(1), 203.1800, 203.2100, 203.2230, and 203.2360.

The definition of "Project" in the federal blueprint includes commas around this phrase, "or change in the method of operation." While this might necessarily suggest that the definition of "Project" in Part 203 should include commas around this phrase, this is not the case. At the time that USEPA included a definition of "Project" in the federal blueprint to read a "physical change in, or change in the method of operation of, an existing major stationary source," it appears that this term was merely added for the convenience of USEPA, to allow USEPA to avoid repeating the phrase "a physical change in or change in the method of operation of" throughout the federal blueprint. 67 Fed. Reg. 80186. A review of other sections where "or change in the method of operation" appears in the federal blueprint shows that commas have been included around this grouping of words in four of the twelve instances where this grouping appears. 40 CFR 51.165.

In those instances where commas do not exist around the words "or change in the method of operation" in 40 CFR 51.165, the defined term or regulatory provision is appropriately read to include either a "physical change in" or "a change in the method of operation." This is most importantly illustrated in the federal blueprint by the key definition of "Major modification" in 40 CFR 51.165. However, the insertion of commas around the words, "or change in the method of operation of" indicates that these words do not alter the basic meaning of the words "physical change in." The insertion of commas around these words would not only be inconsistent with most sections where "or change in the method of operation" has historically appeared in other provision of the federal blueprint but would be inconsistent with how the NA NSR program has historically been implemented. In this regard, either a "physical change" to a source or a "change in the method of operation of" a source has historically triggered nonattainment new source review applicability. To avoid any confusion, the Agency is requesting that this discrepancy as it has historically existed in 40 CFR 51.165(a)(1)(xxxix) as compared to other requirements of 40 CFR 51.165 not be carried over into the definition of "Project" in Section 203.1310 or elsewhere within Part 203.

[65] 40 CFR 51.165(a)(1)(xxviii) and 35 Ill. Adm. Code 204.600.

stationary source shall consider all relevant information, including, but not limited to, that detailed in subsection (b)(1); shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and shall exclude in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth. In lieu of using the aforementioned method, the owner or operator of the major stationary source may elect to use the emissions unit's potential to emit as its projected actual emissions.

The First Notice Version does not include the phrase "but not limited to" in the following phrase "including, *but not limited to,* historical operational data . . ." (*Emphasis added*). By removing the phrase "but not limited to," the First Notice Version no longer signifies that there may be more items besides those expressly listed in subsection (b)(1). The First Notice Version would change the meaning of subsection (b)(1) and would deviate from the federal blueprint at 40 CFR 51.165(a)(1)(xxviii)(B)(1) and the corresponding provision in Part 204, 35 Ill. Adm. Code 204.600(b)(1).

Section 203.1330 Reasonable Further Progress[66]

The definition of "Reasonable Further Progress" in Section 203.1330 is based on existing Section 203.131, which provides as follows:

> "Reasonable Further Progress" means the annual incremental reductions in the emissions of the applicable air pollutant as determined by USEPA pursuant to Part D of the Clean Air Act (42 U.S.C. 7501 et seq.) and federal regulations adopted pursuant thereto.

[66] Section 171(1) of the CAA and 35 Ill. Adm. Code 35 IAC 203.131.

Existing SIP-approved Part 203 discusses incremental reductions in emissions as determined by the Administrator *pursuant to* the requirements of the CAA rather than *under* the requirements of the CAA. *Accord., Merriam-Webster Dictionary.* (The phrase "pursuant to" means to carry out in conformity with or according to. While "under" typically means subject to the authority, control guidance or instruction). Consistent with the CAA, the Agency requests that Section 203.1330 read as follows:

> "Reasonable further progress" means the annual incremental reductions in the emissions of the pollutant as determined by the USEPA ~~under~~ *pursuant to* Part D of Title I of the CAA (42 USC 7501 et seq.) and federal regulations adopted ~~under the CAA~~ *pursuant thereto.*

(*Emphasis added*).

Section 203.1340 Regulated NSR Pollutant[67]

Section 203.1340 provides a definition of "Regulated NSR pollutant." "Regulated NSR pollutant" would consist of the pollutants identified or addressed in subsections (a) through (d). In subsection (c), the First Notice Version did not include "purposes of" in the phrase "[p]recursors for *purposes of* the following." Nor did the First Notice Version include "purposes of" in the phrase "for *purposes of* Subpart R" in subsection (c)(2). The phrase "for purposes of" is typically used to explain the goal or purpose of something. In subsection (c), the First Notice Version deviates from the federal blueprint at 40 CFR 51.165(a)(1)(xxxvii)(C) and subsection (c)(2) diverges from how the federal blueprint routinely uses the phrase for "purposes of." A review of the federal blueprint shows that the phrase for "purposes of" is included in eleven instances where it explains the goal or purpose of something that follows. Consistent with the

[67] 40 CFR 51.165(a)(1)(xxxvii) and 40 CFR 51, Appendix S, II(A)(31)(ii)(b)(4).

federal blueprint, the Agency recommends that the phrase "for purposes of" be included in subsections (c) and (c)(2).

Section 203.1350 Replacement Unit[68]

The definition of "Replacement unit" would mean an emissions unit for which certain criteria, as addressed in subsections (a) through (d), are met. Relevant to this discussion, subsection (c) provides that the replacement must not alter the basic design parameters of the process unit and addresses how a process unit's basic design parameters shall be determined consistent with 35 Ill. Adm. Code 203.1500(c).[69] In subsection (c)(1), the Agency recommends using the abbreviation of "Btu" in lieu of "British Thermal Units." In subsection (c)(3), the First Notice Version proposes language that would deviate from existing 35 Ill. Adm Code 204.620(c); these changes appear to have been proposed as grammatical "fixes" but would deviate from language that has been previously SIP-approved by USEPA. The Agency would recommend that the second sentence of Section 203.1350(c)(3) read as follows:

> If the Agency approves of the use of an alternative basic design parameter or parameters, the Agency ~~must~~ *shall* issue a permit that is legally enforceable, ~~that~~ records such basic design parameter or parameters and requires the owner or operator to comply with such parameter or parameters.

(*Emphasis added*).

Finally, in subsection (d), the First Notice Version removes "otherwise" from the phrase "otherwise permanently disabled" as previously SIP-approved by USEPA in Section

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[68] 40 CFR 51.165(a)(1)(xxi) and 35 Ill. Adm. Code 204.620.

[69] While the USEPA's NSR regulations no longer contain a definition of "basic design parameters" to be used when identifying whether a unit is a "replacement unit," USEPA most recently stated that both regulators and regulated sources may continue to look to the historic definition of this term to guide their understanding of the definition of "replacement unit." 86 FR 37918, 37912 (July 19, 2021). The USEPA's historic definition of the term "basic design parameter" was previously adopted by the Board in 35 Ill. Adm. Code 204.620(c).

204.620(d). The Agency would recommend that "otherwise" be included in Section 203.1350(d).

Section 203.1360 Secondary Emissions[70]

This section provides a definition of "Secondary emissions." "Secondary emissions" generally means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Rather, secondary emissions include emissions from offsite support facilities which would not be constructed or increase emissions except due to the construction or operation of the major stationary source or major modification. While the Agency previously touched upon the First Notice Version's use of "like" in lieu of "such as," Section 203.1360 illustrates the problem when the First Notice Version, without explanation, deviates from the use of "such" in the federal blueprint. While the phrase "such as" is used to introduce an example or series of examples, the term "like" typically means one of many that are similar to each other. *Accord., Merriam-Webster Dictionary.* By replacing the phrase "such as" with the term, "like," the First Notice Version would change the meaning of Section 203.1360 by limiting consideration to those emissions that are similar to those expressly listed rather than a mere listing of examples not limited by similarity. Given the use of "like" would deviate from the federal blueprint at 40 CFR 51.165(a)(1)(viii) and with 35 Ill. Adm. Code 204.650, the Agency requests that the phrase "such as" be used rather than the term "like."

The First Notice Version also removes the phrase "the purposes of" from the phrase "For *the purposes of* this Part," deviating from both the federal blueprint and corresponding definition in Part 204. (*Emphasis added*). As previously discussed by the Agency, the phrase "for purposes

[70] 40 CFR 51.165(a)(1)(viii) and 35 Ill. Adm. Code 204.650.

of" is typically used to explain the goal or purpose of something. For consistency with the federal blueprint at 40 CFR 51.165(a)(1)(viii) and with 35 Ill. Adm. Code 204.650, the Agency requests that the phrase "the purposes of" be included in the definition of "Secondary emissions."

Section 203.1370 Significant[71]

This section provides a definition for "Significant." "Significant" would mean, in reference to a net emissions increase or the potential of a source to emit those pollutants identified by subsection (a), a rate of annual emissions that would equal or exceed the rate specified in this same subsection (a). In subsection (a), the First Notice Version eliminates the phrase "in reference to" inconsistent with the federal blueprint at 40 CFR 51.165(a)(1)(x)(A) and with the corresponding definition in 35 Ill. Adm. Code 204.660. The Agency requests that the phrase "in reference to" be included in subsection (a).

Further, in subsection (a), the First Notice Version refers to "regulated NSR pollutant" in lieu of "pollutant" in two instances. In the first instance, the First Notice Version reads "or the potential of a source to emit any of the following *regulated NSR* pollutants. . . ." in lieu of "or the potential of a source to emit any of the following pollutants. . . ." (*Emphasis added*). Second, the header to the table in the First Notice Version reads "*Regulated NSR* Pollutant Emissions Rate" rather than "Pollutant and Emissions Rate" (*Emphasis added*). While both are inconsistent with the federal blueprint at 40 CFR 51.165(a)(1)(x)(A) and with the corresponding provision in Part 204 (*See*, 35 Ill. Adm. Code 204.660(a)) that each refer to "pollutant," given the definition of "Potential to emit" in Section 203.1290 refers to "the maximum capacity of a stationary source to emit a *pollutant* under its physical and operational design . . .," the Agency

[71] 40 CFR 51.165(a)(1)(x) and 35 Ill. Adm. Code 203.207, 203.209 and 204.660.

recommends that Section 203.1370(a) also refer to "pollutant." (*Emphasis added*). *See also*, 40 CFR 51.165(a)(1)(iii) and 35 Ill. Adm. Code 204.560.

Section 203.1390 Stack in Existence[72]

In the First Notice Version, changes were proposed to the definition of "Stack in existence" in Section 203.1390 that would differ from what should be the corresponding definition of "Stack in existence" in Section 204.680. Given both definitions are based on the definition of "Stack in existence" in the federal blueprint at 40 CFR 51.100(gg), the definition of "Stack in existence" in Section 203.1390 should be identical to the definition of "Stack in existence" in Section 204.680. If not, the suggestion would necessarily be that there is a different meaning associated with the term "Stack in existence" in Section 203.1390 versus what should be the same definition in Section 204.680. The Agency requests that the definition of "Stack in existence" in Section 203.1390 be consistent with what should be the same definition at Section 204.680 and read as follows:

> **Section 203.1390 Stack in Existence**
>
> "Stack in existence" means that the owner or operator had ~~(1)~~ begun, or caused to begin, a continuous program of physical on-site construction of the stack, or ~~(2)~~ entered into binding agreements or contractual obligations~~, which~~ *that* could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

(*Emphasis added and for commas in* yellow).

Section 203.1410 Applicability[73]

This Section addresses the applicability of proposed Part 203. Relevant to this discussion is subsection (c) which addresses how one determines whether a proposed project at an existing

[72] 40 CFR 51.100(gg) and 35 Ill. Adm. Code 204.680.

[73] 40 CFR 51.165(a)(2)(i) - (iii), (a)(6) and 35 Ill. Adm. Code 204.800.

major stationary source is a major modification. The First Notice Version replaces "in accordance with" with "in compliance with" in the phrase "[t]he requirements of this Part will be applied in accordance with . . ." in subsection (c). Given the phrase "in accordance with" has been SIP-approved by USEPA in the corresponding provision in Section 204.800(d), the Agency recommends the phrase "in accordance with" be used in Section 203.1410(c).

Subsection (c)(2) provides that the procedure for calculating whether a significant emissions increase will occur depends upon the type(s) of emissions units involved in the project, according to subsections (c)(3) through (c)(5). The Agency would recommend for clarity that the section headings to subsections (c)(3) through (c)(5) be capitalized similar to the capitalization of the corresponding section headings in 35 Ill. Adm. Code 204.800(d)(3) through (d)(5). For instance, the section heading to 203.1410(c)(3), (4) and (5), respectively, would read as follows:

> 3) Actual-to-Projected-Actual Applicability Test for Projects That Only Involve Existing Emissions Units.
>
> 4) Actual-to-Potential Test for Projects That Only Involve Construction of a New Emissions Unit or Units.
>
> 5) Hybrid Test for Projects That Involve Multiple Types of Emissions Unit or Units.

(Emphasis added in yellow).

Section 203.1440 Prohibitions[74]

Consistent with existing Part 203, Section 203.1440 includes several prohibitions specific to new major stationary sources and major modifications located in nonattainment areas. In subsections (a) through (c) of the First Notice Version, "must" replaced "shall" and made other

[74] 35 Ill. Adm. Code 203.201, 203.203 and 203.601.

changes to accommodate the use of this auxiliary verb. The Agency requests that subsections (a) thought (c) be consistent with the existing SIP-approved Part 203, respectively Sections 203.203(d), 203.201 and 203.601, and their general approach to the use of "shall."

Section 203.1500 Stack Heights[75]

In subsection (a) of Section 203.1500, "Stack heights," the degree of emission limitation required for control of any air pollutant under Part 203 shall not be affected by so much of the stack height of any source in excess of good engineering practice or any other dispersion technique. In the First Notice Version, Section 203.1500(a), differs from what should be identical requirements in Section 204.1000(a), "Stack heights."[76] Given both requirements are based on 40 CFR 51.118, the requirements for "Stack heights" in Section 203.1500(a) should be identical to the requirements for "Stack heights" in Section 204.1000(a). If not, the suggestion would necessarily be that there is a different meaning associated with these provisions in Section 203.1500(a) versus what should be the same provisions in Section 204.1000(a). The Agency requests that the requirement for "Stack heights" in proposed Section 203.1500(a) be identical to the existing requirement for "Stack heights" in Section 204.1000(a) and read as follows:

a) The degree of emission limitation required for control of any regulated NSR pollutant under this Part ~~must~~ *shall* not be affected *in any manner* by:

1) So much *portion* of the stack height of any source *that* ~~as~~ exceeds good engineering practice; or

2) Any other dispersion technique.

(*Emphasis added*).

[75] 40 CFR 51.118 and 35 Ill. Adm. Code 204.1000.

[76] The only difference should be the reference to "regulated NSR pollutant" in Section 203.1500(a) versus the reference to "air pollutant" in Section 204.1000(a).

Section 203.1600 Construction Permit[77]

For purposes of Section 203.1600, the Board found that based on the Board's discussion of Section 203.1810, "the Board agrees with IEPA and deletes the last sentence in Section 203.1600(a)." Order at page 15. While making this finding, the Board did not reflect this finding in the First Notice Version. Consistent with the Order, the Agency requests that the last sentence in Section 203.1600(a) be removed from the definition of "Construction Permit" to read as follows:

> Section 203.1600 Construction Permit
>
> a) The Agency ~~must~~ *shall* only issue a construction permit for a new major stationary source or a major modification that is subject to the requirements of this Part, other than this Subpart or Subpart R, if the Agency determines all applicable requirements of this Part, other than this Subpart and Subpart R, are satisfied. ~~This includes the requirements in Section 203.1810(h) if IPT would be relied upon for all or a portion of the emissions offset that must be provided for such a source or modification.~~

(*Emphasis added*).

Section 203.1610 Public Participation[78]

Section 203.1610 provides the public participation that is required for the proposed issuance of any new or modified construction permit for a new major source or major modification pursuant to Part 203. In subsection (a), the First Notice Version reads "the Agency *must* provide a notice of the proposed issuance or modification of a permit . . ." rather than "the Agency *shall* provide, *at a minimum,* a notice of the proposed issuance or modification of a permit. . ." (*Emphasis added*). As previously discussed, the phrase "at a minimum" is used to emphasize that there may be other things to consider but these particular actions are essential.

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[77] 35 Ill. Adm. Code 203.203.

[78] 40 CFR 51.161 and 35 Ill. Adm. Code 203.150 and 204.1320.

Accord., Merriam-Webster Dictionary. By removing the phrase "at a minimum," the First Notice Version changes the meaning of subsection (a) and deviates from existing SIP-approved 35 Ill. Adm. Code 203.150 and 204.1320.

Section 203.1700 Recordkeeping and Reporting Requirements for Certain Projects at Major Stationary Sources in Nonattainment Areas[79]

Section 203.1700 provides that the requirements of this section apply if a "reasonable possibility" exists, based on the criteria specified later in subsection (f), that a project that is not projected to be a major modification for a pollutant, may nevertheless in practice, result in a significant emissions increase. It is only applicable when the owner or operator elects to use the method in Sections 203.1320(b)(1) through (b)(3) for calculating projected actual emissions after the project. In the introductory paragraph of IERG's proposal, the relevant language would have provided that "[e]xcept as otherwise provided in subsection (f), the provisions of this Section apply *with respect* to any regulated NSR pollutant . . ." (*Emphasis added*). In lieu of IERG's proposal, the First Notice Version offers that "[e]xcept as otherwise provided in subsection (f), the provisions of this Section apply to any regulated NSR pollutant . . ." In this regard, the entirety of this section will never apply to the owner or operator or a modification. This is because this section establishes two differing sets of requirements, one for electric utility steam generating units and one for other units. For consistency, the Agency recommends that the provisions be consistent with the federal blueprint (and 35 Ill. Adm. Code 204.1400).

In subsection (g) of IERG's proposal, the owner or operator of the source shall make the information required by this section available for review upon a request for inspection by the Agency or USEPA or by a request by the general public to the Agency. While IERG's proposal was based on 40 CFR 51.165(a)(7), the recordkeeping requirements of this subsection

[79] 40 CFR 51.165(a)(6) and (7) and 35 Ill. Adm. Code 204.1400.

necessarily had to be tailored to state recordkeeping requirements consistent with approach taken by the Agency when it proposed 35 Ill. Adm. Code 204.1400(g). In this vein, the following language was offered in subsection (g):

> The owner or operator of the source *shall* make the information required to be documented and maintained *pursuant to* this Section available for review upon a request for inspection by the Illinois EPA or USEPA or the general public *pursuant to* the requirements contained in Section 39.5(8)(e) of the Act.

(*Emphasis added*). In the second instance that "pursuant to" was used in subsection (g), the First Notice Version replaces "pursuant to" with the term "under." The term "under" suggests that the general public possesses the authority to request documents under Section 39.5(8)(e) of the Act. That is not the case and, consistent with the approach that the Agency took in the Part 204 rulemaking, this language was tailored to authorize all parties, including the general public, to request documents pursuant to the requirements of Section 39.5(8)(e) of the Act. The language of the First Notice Version no longer affords the public this ability and, for this reason, the Agency recommends the proposed language set forth above be included in subsection (g).

Section 203.1800 Lowest Achievable Emission Rate[80]

This section provides a definition for "Lowest achievable emission rate." These provisions are not based on the federal blueprint but rather are based on existing Section 203.301(b) through (f). In subsection (c), the First Notice Version utilizes the term "demonstration" in lieu of "showing" inconsistent with the use of "showing" in existing 35 Ill. Adm. Code 203.301(d). Given existing Section 203.301(d) has been SIP-approved by USEPA with the term "showing," the Agency recommends following the language of existing Section 203.301(d) as closely as possible unless an express reason exists to deviate from this language.

[80] CAA Section 182(c)(7) – (8) and (e)(2) and 35 Ill. Adm. Code 203.301.

Also relevant to this discussion is the language of subsection (d) where the First Notice Version made, without accompanying explanation, what might appear to be inconsequential changes to Section 203.1800(d). As previously discussed by the Agency, the phrase "for purposes of" is typically used to explain the goal or purpose of something; by removing this phrase, this nuance is lost in the First Notice Version.

The First Notice Version revises "but in applying this Section *in the case of any* such modification," in subsection (d) to now read, "but in applying this Section *to the* such modification." (*Emphasis added*). While this change was not explained, the First Notice Version presumably meant to delete "such" as it has done elsewhere in proposed Section 203. By doing so, the First Notice Version would no longer add emphasis to the term "modification." In addition, by deleting the phrase with "in the case of any" to "to the," the First Notice Version no longer means "in the event of a modification." Such changes may unnecessarily delay or impede SIP-approval and create unnecessary confusion in future implementation of Section 203.1800(d). For consistency with existing Section 203.301(e), the Agency requests that Section 203.1800(d) read as follows:

> If the owner or operator of a major stationary source (other than a source which emits or has the potential to emit 100 tons per year or more of volatile organic material or nitrogen oxides) located in an area classified as serious or severe nonattainment for ozone does not elect to provide internal offsets for a change at the source in *accordance* ~~compliance~~ with Section 203.1220(d), *such* ~~the~~ change *shall* ~~must~~ be considered a major modification for *purposes of* this Part, but in applying this Section ~~to the~~ *in the case of any* such modification, the BACT, as defined in section 169 of the CAA (42 USC 7479) ~~must~~ *shall* be substituted for the Lowest Achievable Emission Rate (LAER). BACT ~~must~~ *shall* be determined *in* accord*ance* ~~ing to the~~ *with* policies and procedures published by USEPA.

Section 203.1810 Emission Offsets[81]

Section 203.1810 addresses the requirements for emission offsets or emission reductions from sources in the area in which the proposed source or modification is located such that there will be reasonable further progress toward the attainment of the applicable NAAQS. In subsection (a)(1), the First Notice Version replaces "as set forth in" with "under" inconsistent with the usage of "as set forth in" in 35 Ill. Adm. Code 203.302(a). Given the phrase "as set forth in" has been SIP-approved in this context by USEPA, the Agency would recommend the phrase "as set forth in" be used in the corresponding subsection in Section 203.1810.

Subsection (c)(3) of the First Notice Version provides that where the new major stationary source or major modification is a replacement for an existing stationary source or emissions unit that is being shut down to provide necessary offsets, the Agency *must* allow up to 180 days for shakedown of the new major stationary source or major modification. Meanwhile the federal provisions at 40 CFR Part 51, Appendix S, Section V, states that the Agency "*may* allow up to 180 days for shakedown." Given 40 CFR Part 51, Appendix S, Section V, provides that the Agency "*may* allow up to 180 days" the Agency recommends subsection (c)(3) either use the terms "may" or "shall." The term "must" would inappropriately relax what would otherwise be authorized by 40 CFR Part 51, Appendix S and is provided for in Part 203. The intent is also difficult to understand, i.e., "the Agency *must* allow *up to* 180 days for shakedown . . ." (*Emphasis added*).

Subsection (e)(1) of the First Notice Version provides that pollutants for emission offsets must be determined as follows except as provided in subsection (h) which would address interprecursor trading. However, the Board found that it would delete interprecursor trading "in

[81] CAA Sections 173(a)(1)(B), 173(c)(2) and 182(e)(2); 40 CFR 51.165(a)(3)(ii), (a)(9)(ii) and (a)(11); 40 CFR 51, Appendix S, IV and V; and 35 Ill. Adm. Code 203.302 and 203.303.

its entirety" in Section 203.1810(h). Consistent with this finding, revised Section 203 should make no mention of IPT. *See,* Order at page 16. The Agency would renew its request that the Board not include a reference to IPT in Section 203.1810(e)(1), which should read as follows:

> ~~Except as provided in subsection (h), which addresses interprecursor trading for $PM_{2.5}$;~~ eEmission reductions must be for the pollutant for which emission offsets are required, e.g., reductions in CO emissions cannot be used as emission offsets for increases in emissions of SO_2 reductions.

Regarding subsection (f)(1), in addition to meeting other criteria for emission offsets, emission reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours may generally be credited for offsets if they meet certain requirements including that such reductions are surplus, permanent, quantifiable and federally enforceable. 40 CFR 51.165(a)(3)(ii)(C). To fulfill this requirement, in part, IERG proposed Section 203.1810(c)(1) providing that "[a]ll emissions reductions relied upon as emissions offsets be federally enforceable." Later, in Section 203.1810(f)(1)(A), IERG proposed language providing that "emission reduction achieved by shutting down . . . or curtailing production . . . . *shall* be credited for offsets if they . . . are surplus, permanent and quantifiable." (*Emphasis added*).

As previously explained by the Agency, IERG's approach deviates from the federal blueprint and unnecessarily creates ambiguity that could be avoided by simply restating the requirement that such reductions be "federally enforceable" in Section 203.1810(f).

> In proposed Section 203.1810(f)(1)(A) and the accompanying reference to subsection (f)(1)(A) in Section 203.1810(f)(2)(B), the proposed language might suggest that any emissions reductions achieved by the shutdown or curtailment need not be "federally enforceable" as that criterion is not included. However, 40 CFR 51.165(a)(3)(ii)(C)(1)(*i*) and (a)(3)(ii)(C)(2)(*ii*) clearly provides that such reductions must be "federally enforceable." While proposed Section 203.1810(c)(1) would include the requirement that any offset be federally enforceable, such an approach deviates from the blueprint and would create ambiguity that can be avoided by restating this requirement in Section

203.1810(f). *After consulting with USEPA*, the Illinois EPA would offer the following language for Section 203.1810(f)(1)(A):

f) Emissions reductions from shutdowns or curtailments shall be credited as follows:

1) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production operating hours shall be credited for offsets if they meet the following requirements:

A) *Such* reductions are surplus, permanent, ~~and~~ quantifiable and federally enforceable; and

Agency Comments at pages 29 - 30 (*Emphasis added*). The Agency renews its request that Section 203.1810(f)(1)(A) be consistent with the federal blueprint.

While the Agency previously discussed the use of mandatory words such as "must" as opposed to permissive verbs such as "may," the following revisions in the First Notice Version presumably were prompted by such changes to Section 203.1810(f). In the First Notice Version, subsection (f) provides that "[e]mission reductions from shutdowns or curtailments *must* be credited as follows:" and subsection (f)(1) provides that emission reductions from shutdowns or curtailments "*must* be credited for offsets if they meet the following requirements . . ." Meanwhile the federal provision at 40 CFR 51.165(a)(3)(ii)(C)(1) states that the requirements in subsection (f)(1)(B) "*may* be generally credited for offsets if . . ." Similarly, the First Notice Version in subsection (f)(2) provides that emission reductions from shutdowns or curtailments and that do not meet the requirements in subsection (f)(1)(B) "*must* be credited only if" the requirements of subsection (f)(2)(A) and (f)(2)(B) have been met. Meanwhile the federal provision at 40 CFR 51.165(a)(3)(ii)(C)(2) states that the requirements in subsection (f)(1)(B) "*may* be generally credited only if . . ." Given 40 CFR 51.165(a)(3)(ii)(C)(1) and (2) provide that the emissions reduction "*may* be generally credited . . ." the Agency recommends subsections (f), (f)(1) and (2) either use the terms "may" or "shall." The term "must" would

inappropriately relax what would otherwise be authorized by 40 CFR 51.165(a)(3)(ii)(C)(1) and (2) in Part 203. The meaning that is intended in the First Notice Version is also not clear as it states "and that do not meet the requirements in subsection (f)(1)(B) *must* be credited only if . . ." (*Emphasis added*).

Similar changes were made in the First Notice Version to the last sentence in Section 203.1810(f)(1)(B). Consistent with the federal blueprint at 40 CFR 51.165(a)(3)(ii)(C)(1), the last sentence in Section 203.1810(f)(1)(B) previously provided that no credit shall be given for shutdowns occurring before August 7, 1977 (stating "However, in *no event may* credit be given for shutdowns that occurred before August 7, 1977."). Meanwhile, the First Notice Version provides the opposite - that credit *must* be given for shutdowns occurring before August 7, 1977 (stating "However, credit *must* be given for shutdowns that occurred before August 7, 1977."). (*Emphasis added*). The Agency renews its request that the state program should mirror the federal program's usage of auxiliary verbs and associated phrases, assuring a standard of consistency that will secure full approval of revised Part 203 as part of Illinois SIP.

For purposes of Section 203.1810(g)(3) the Board stated that it "is convinced that IEPA's position on proposed emissions offsets language is correct" and found that the "language should mirror the CAA and language traditionally used in SIPs approved by the USEPA." Order at page 16. However, this finding was not reflected in the proposed language included in the First Notice Version for Section 203.1810(g). Consistent with the Order, the Agency requests that Section 203.1810(g) not deviate from the Board's findings earlier in its Order and read as follows:

> 3) Emissions reductions otherwise required by the CAA (42 USC 7401 *et seq.*) *shall* ~~must~~ not be creditable as emission ~~offsets~~ *reductions for purposes of any such offset requirement. Incidental e*~~E~~mission reductions which are not otherwise required by the CAA ~~must~~ *shall* be creditable as

> emissions ~~offsets~~ *reductions for such purposes* if ~~the~~ *such* emission reductions meet the requirements of this Section.

(*Emphasis added*).

For purposes of subsection (h), Emissions Offsets, the Board found as follows:

> The Board agrees with IEPA's interpretation of the D.C. Circuit Court's rationale regarding emissions of air pollutants, which includes the pollutant formed by precursor pollutants, or solely the precursor pollutants actually emitted. As explained by the IEPA, 40 CFR 51.165(a)(11) provides for submitting a plan that may authorize the offset requirements for emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursor may be satisfied by [interprecursor trading] IPT. However, the blueprint does not require including IPT in any SIP submittal. In light of this, the Board will delete Section 203.1810(h) in its entirety as suggested by IEPA and remove the acronym for IPT in Section 203.1010.

Order at page 16. However, this finding was not reflected in the proposed language included in the First Notice Version. The Agency requests that Section 203.1810(h) be deleted in its entirety from the First Notice Version consistent with the Board's earlier findings in its Order.

Section 203.1820 Compliance by Existing Sources[82]

Section 203.1820 generally requires that the applicant certify that all existing major stationary sources owned or operated by the applicant in the same state as the proposed source are in compliance with all applicable emission limitations and standards under state and federal air pollution control requirements or are subject to a schedule for compliance. The First Notice Version replaces "he or she" with "they" inconsistent with the usage of "he or she" in existing 35 Ill. Adm. Code 203.305. The plural noun "they" refers to more than one person and necessarily deviates from the singular nouns used earlier in this sentence, "owner" or "operator." Despite replacing the singular nouns "he or she" with the plural noun, "they," the verbs that follow "they" in the First Notice Version remain singular. Elsewhere in Section 203.1820, the First Notice Version removes for "purposes of" from the phrase "[f]or *purposes of* this Section. . ."

[82] 35 Ill. Adm. Code 203.305.

(*Emphasis added*). As previously discussed, the phrase "for purposes of" is typically used to explain the goal or purpose of something. Given existing 35 Ill. Adm. Code 203.305 has been SIP-approved by USEPA, the Agency would recommend not deviating from this language in Section 203.1820.

Section 203.1900 General Maintenance of Emission Offsets[83]

Section 203.1900 provides that no person shall cease to maintain those emission offsets that were provided for a source or modification subject to Part 203. The First Notice Version replaces "[n]o person shall cease" with "[a] person must not cease" deviating from existing SIP-approved 35 Ill. Adm. Code 203.701. To ensure that this requirement is clear, the Agency would recommend avoid stating that "a person must not cease" and avoid deviating from the language of existing Section 203.701 in Section 203.1900.

Section 203.2000 Offsetting by Alternative or Innovative Means CAA[84]

Section 203.2000 provides that a source may offset, by alternative or innovative means, emission increases from rocket engine firing at an existing or modified major stationary source that tests rocket engines or motors under conditions specified in subsections (a) through (d). In subsection (b), the First Notice Version removes the phrase "satisfaction of the" from the phrase "[t]he source demonstrates to the *satisfaction of the* Agency" deviating from existing SIP-approved 35 Ill. Adm. Code 203.801 and from Section 173(e)(2) of the CAA (*Emphasis added*). The Agency would recommend not deviating from 35 Ill. Adm. Code 203.801 or the CAA.

[83] 35 Ill. Adm. Code 203.701.

[84] CAA Section 173(e) and 35 Ill. Adm. Code 203.801.

Section 203.2100 Applicability[85]

Section 203.2100 provides Applicability provisions for Plantwide Applicability Limitations (PALs) for existing major stationary sources. PALs generally provide an option for such sources to accept a plantwide limit on a pollutant in exchange for future flexibility to undertake projects without triggering major NSR for that particular pollutant so long as emissions do not exceed the PAL. Notably, when USEPA established final regulatory provisions for actuals PALs in its 2002 NSR reform package, USEPA included nearly identical requirements (and language) in the major NSR rules for nonattainment areas at 40 CFR 51.165(f) and in the PSD rules for attainment areas at 40 CFR 51.166(w) (detailing those requirements that must be included in any SIP submittal for PSD) and 40 CFR 52.21(aa) (delegated PSD programs), 67 Fed. Reg. 80186 (December 2002). While USEPA intended the requirements for PALs to generally be the same in attainment and nonattainment areas, the First Notice Version would include language in Part 203 that would deviate from the language in Part 204 as it now exists for PALs.

Subsection (a) would authorize the Agency to approve the use of actuals PALs for any existing major stationary source if the PALs meet the requirements in this Subpart Q (the portion of Part 203 that addresses PAL permits). While the Agency previously discussed the use of "must" and other changes made in lieu of "shall" in the First Notice Version, these revisions in the First Notice Version presumably are what prompted changes elsewhere to the accompanying regulatory text. For instance, in Section 203.2350(b)(2), in lieu of "shall have discretion to reopen the PAL permit" the Board has proposed "may reopen the PAL permit." For consistency with the federal NA NSR blueprint and Part 204, the Agency would request that all revisions to

[85] 40 CFR 51.165(f)(1) and 35 Ill. Adm. Code 204.1600.

the term "shall" and all accompanying grammatical revisions prompted by changes to the term "shall" in the First Notice Version be made consistent with the federal blueprint and Part 204. The Agency will not be discussing each instance where the First Notice Version proposed the use of "must" in lieu of "shall" as provided by the federal blueprint (and Part 204).

Section 203.2130 Allowable Emissions[86]

In Section 203.2130, the definition of "Allowable emissions" for purposes of Subpart Q, would mean the definition of "Allowable emissions" as defined in Section 203.1050, except that it shall be calculated considering any emissions limitation that is enforceable as a practical matter on the emissions unit's potential to emit. The definition of "Allowable emissions" in the First Notice Version includes a reference to 203.1290 for the definition of potential to emit. No similar reference is in the corresponding definition of "Allowable emissions" in federal blueprint at 40 CFR 51.165(f)(2)(ii)(A) or 35 Ill. Adm. Code 204.1630. The Agency recommends no reference should be made to 203.1290 in the definition of "Allowable emissions."

Section 203.2140 Best Available Control Technology[87]

This Section provides a definition for "Best available control technology." "Best available control technology" generally means an emissions limitation based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Agency determines is achievable for such source or modification on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs. While this section further explains how such limitation is to be set, in no event shall application of BACT result in emissions of any pollutant which would

[86] 40 CFR 51.165(f)(2)(ii) and 35 Ill. Adm. Code 204.1630.

[87] 40 CFR 51.165(a)(1)(xl) and 35 Ill. Adm. Code 204.280.

exceed the emissions allowed by any applicable standards under 40 CFR Parts 60, 61, 62 and 63. The definition of "Best available control technology" in the First Notice Version deviates from the corresponding definition in the federal blueprint at 40 CFR 51.165(a)(1)(xl) and 35 Ill. Adm. Code 204.280. To the extent that these definitions unnecessarily deviate from each other, these changes have created unnecessary ambiguity in an important definition borrowed from the federal PSD rules (and necessarily 35 Ill. Adm. Code Part 204). The Agency recommends that this definition read as follows:

> **Section 203.2140 Best Available Control Technology (BACT)**
>
> "Best Available Control Technology" or "BACT" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant *that* ~~which~~ would be emitted from any proposed major stationary source or major modification that the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for *such* ~~the~~ source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of *such* ~~the~~ pollutant. ~~The~~*In no event shall* application of BACT ~~must not~~ result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR 60, 61, 62 and 63 (as incorporated by reference in Section 203.1000). If the Agency determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination *thereof* ~~of them~~, may be prescribed instead to satisfy the requirement for the application of BACT. *Such*~~This~~ standard *shall*~~must~~, to the degree possible, *set forth* ~~specify~~ the emissions reduction achievable by implementation of ~~the~~ *such* design, equipment, work practice or operation, and *shall*~~must~~ provide for compliance by means that achieve equivalent results.

(*Emphasis added*).

Section 203.2270 Reasonably Available Control Technology (RACT)[88]

Section 203.2270 provides a definition for "'Reasonably achievable control technology' or 'RACT.'" RACT would mean devices, systems, process modifications, or other apparatus or

[88] 40 CFR 51.100(o) and 35 Ill. Adm. Code 204.1760.

techniques that are reasonably available taking into account the necessity of imposing such controls, the impacts of such controls and alternative means to attain and maintain a NAAQS. In the First Notice Version, changes were proposed to Section 203.2270, that would differ from what should be the identical definition of "RACT" in Section 204.1760. Given both definitions are based on the same definition of "RACT" in the federal blueprint at 40 CFR 51.100(o), the definition of "RACT" in Section 203.2270 should be identical to the definition of "RACT" in Section 204.1760. If not, the suggestion would necessarily be that there is a different meaning associated with the term "RACT" in Section 203.2270 versus what should be the same definition in Section 204.1760. The Agency requests that the definition of "RACT" in Section 203.2270 be consistent with both the federal blueprint at 40 CFR 51.100(o) and Section 204.1760. The language would read as follows:

> **Section 203.2270 Reasonably Achievable Control Technology (RACT)**
>
> "Reasonably Achievable Control Technology" or "RACT" means devices, systems, process modifications, or other apparatus or techniques that are reasonably available ~~considering~~ *taking into account*:
>
> a) The necessity of imposing ~~the~~ *such* controls *in order* to attain and maintain a national ambient air quality standard;
>
> b) The social, environmental, and economic impact of ~~the~~ *such* controls; and
>
> c) Alternative means of providing for attainment and maintenance of ~~the~~ *such* standard.

(*Emphasis added*).

Section 203.2280 Significant Emissions Unit[89]

For purposes of Section 203.2280, the Board agreed that IERG's proposed Board Note "could confuse parties in the future and not add a substantive requirement." Order at page 17.

[89] 40 CFR 51.165(f)(2)(xi) and 35 Ill. Adm. Code 204.1770.

Consequently, the Order stated that the proposed Note would not be included in Section 203.2280 in the First Notice Version. While making this finding, the language of Section 203.2280 continued to include this Note in the First Notice Version. The Agency requests that the Note accompanying Section 203.2280 in the First Notice Version be deleted.

Section 203.2290 Small Emissions Unit[90]

This section provides a definition for "Small emissions unit." "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant less than its significant level. The First Notice Version includes the term "applicable" before "significant level for that PAL pollutant" deviating from the corresponding definition in the federal blueprint at 40 CFR 51.165(f)(2)(iii) and 35 Ill. Adm. Code 204.1780. The Agency requests that the term be deleted from the definition of "Small emission unit."

Next, the Board agreed that IERG's proposed Board Note that would accompany Section 203.2290 "could confuse parties in the future and not add a substantive requirement" and thus, the Board would not be including the proposed Note in Section 203.2290 in the First Notice Version. Order at page 17. While making this finding, the language of Section 203.2290 continued to include the Note in the First Notice Version. The Agency requests that the Note accompanying Section 203.2290 in the First Notice Version be deleted.

Section 203.2310 General Requirements for Establishing PAL[91]

This section identifies the requirements that must be met to establish a PAL at a major stationary source. In the beginning of subsection (a), the First Notice Version reads "*if* the requirements of this Section are met" rather than "*provided that, at a minimum,* the requirements

[90] 40 CFR 51.165(f)(2)(iii) and 35 Ill. Adm. Code 204.1780.
[91] 40 CFR 51.165(f)(4) and 35 Ill. Adm. Code 204.1800.

of this Section are met." (*Emphasis added*). "If" fails to emphasize the condition or requirement as the phrase "provided that" does. Meanwhile the phrase "at a minimum" is used to emphasize that there may be other things to consider but these particular actions are essential. *Accord., Merriam-Webster Dictionary.* By replacing the phrase "provided that, at a minimum," with the term, "if," the First Notice Version would change the meaning of subsection (a) and would deviate from the federal blueprint at 40 CFR 51.165(f)(4)(i) and 35 Ill. Adm. Code 204.1800(a).

Subsection (b) provides that emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as offsets unless the PAL is reduced by the amount of such reductions and such reductions would be creditable in the absence of the PAL. In subsection (b), the First Notice Version reads "for emissions offsets" rather than "for *purposes of* emissions offsets" diverging from the federal blueprint at 40 CFR 51.165(f)(4)(ii) and 35 Ill. Adm. Code 204.1800(b). The First Notice Version also deviates from Section 204.1800(b) by using the term "the" in lieu of the term "those." To be consistent with the corresponding requirement of Part 204, the Agency requests that Section 203.2310(b) read as follows:

> b) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for *purposes of* offsets under 35 Ill. Adm. Code 203 unless the level of the PAL is reduced by the amount of ~~the~~ *those* emissions reductions and the reductions would be creditable in the absence of the PAL.

(*Emphasis added*).

Section 203.2330 Setting the 10-Year Actuals PAL Level[92]

This section provides the mechanism for establishing any actuals PAL level. Subsection (a) provides that the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions for the PAL pollutant for each emissions unit at the source

[92] 40 CFR 51.165(f)(6) and 35 Ill. Adm. Code 204.1820.

plus the applicable significant level for the PAL pollutant. In subsection (a), the First Notice Version reads "for the PAL pollutant under Section 203.1370 or *in* the CAA," "rather than "for the PAL pollutant under Section 203.1370 or *under* the CAA," diverging from the federal blueprint at 40 CFR 51.165(f)(6)(i) and 35 Ill. Adm. Code 204.1820(a). (*Emphasis added*). The Agency requests that the term "under" be used in lieu of the term "in" in subsection (a).

For purposes of Section 203.2330, the Board agreed that IERG's proposed Board Note "could confuse parties in the future and not add a substantive requirement." Order at page 17. Consequently, the Order stated that the proposed Note would not be included in Section 203.2330 in the First Notice Version. While making this finding, Section 203.2330 continued to include this Note in the First Notice Version. The Agency requests that the Note accompanying Section 203.2330 in the First Notice Version be deleted.

Section 203.2340 Contents of the PAL Permit[93]

Section 203.2340 provides the information that would be required to be included in a PAL permit. In the beginning of Section 203.2340, the First Notice Version reads, "[t]he PAL permit must contain:" rather than "[t]he PAL permit must contain, *at a minimum*:" (*Emphasis added*). The phrase "at a minimum" is used to emphasize that there may be other things to include but these particular items are essential. *Accord., Merriam-Webster Dictionary.* By not include the phrase "at a minimum," the First Notice Version would change the meaning of Section 203.2340 and would deviate from the federal blueprint at 40 CFR 51.165(f)(7) and 35 Ill. Adm. Code 204.1830.

[93] 40 CFR 51.165(f)(7) and 35 Ill. Adm. Code 204.1830.

Section 203.2350 Effective Period and Reopening of a PAL Permit[94]

Section 203.2350 would provide 10 years as the effective period for a PAL in subsection (a) and specifies the conditions in subsection (b) under which the Agency must or may reopen a PAL permit. Relevant to this discussion is the language of subsection (b)(2) where the First Notice Version made, without accompanying explanation, what might appear to be inconsequential changes to Section 203.2350(b)(2). Such changes may unnecessarily delay SIP-approval and create unnecessary confusion in future implementation of Section 203.2350(b)(2). For consistency with the federal blueprint at 40 CFR 51.165(f)(8)(ii)(B) and the same requirement in 35 Ill. Adm. Code 204.1840(b)(2), the Agency requests that Section 203.2350(b)(2) read as follows:

> 2) The Agency ~~may~~ *shall have discretion to* reopen the PAL permit ~~to reduce the PAL~~ for the following:
>
> A) *Reduce the PAL t*~~T~~o reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;
>
> B) *Reduce the PAL c*~~C~~onsistent with any other requirement, that is enforceable as a practical matter, and that the Agency may impose on the major stationary source under the SIP; and
>
> C) *Reduce the PAL i*~~I~~f the Agency determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.
>
> (*Emphasis added*)

[94] 40 CFR 51.165(f)(8) and 35 Ill. Adm. Code 204.1840.

Section 203.2360 Expiration of a PAL[95]

This section sets forth those requirements that a source must comply with upon expiration of a PAL and further authorizes the Agency to determine whether and how to distribute PAL allowable emissions and to issue a revised permit incorporating allowable limits as it deems appropriate. The First Notice Version would replace "in accordance with" with "in compliance with" in Section 203.2360 inconsistent with the usage of "in accordance with" in 40 CFR 51.165(f)(9). This approach not only deviates from the applicable federal blueprint but could cause unnecessary confusion to the extent deviates from the same provision in Section 204.1850. The Agency recommends that "in accordance with" be included for consistency with the federal blueprint and the corresponding requirement in Part 204.

Section 203.2370 Renewal of a PAL[96]

Section 203.2370 would provide procedures before a request to renew a PAL can be approved. Subsection (d) provides that in determining whether and how to adjust the PAL, the Agency shall consider subsections (d)(1) and (2). The First Notice Version would replace "*in no case may* any *such* adjustment *fail to* comply" with "any adjustment *must* comply" in subsection (d) inconsistent with 40 CFR 51.165(f)(10)(iv) and the corresponding requirement in Section 204.1860(d). The Agency recommends that "*in no case may* any *such* adjustment *fail to* comply" be included in subsection (d) for consistency with the federal blueprint and the corresponding requirement in Part 204. (*Emphasis added*).

[95] 40 CFR 51.165(f)(9) and 35 Ill. Adm. Code 204.1850.

[96] 40 CFR 51.165(f)(10) and 35 Ill. Adm. Code 204.1860.

Section 203.2380 Increasing the PAL During the PAL Effective Period[97]

Section 203.2380 would provide what conditions must be met to increase a PAL emission limitation during the effective period of the PAL. Relevant to this discussion is subsection (b) where the First Notice Version provides "BACT equivalent controls as determined in *compliance* with subsection (a)(2))," rather than "BACT equivalent controls as determined in *accordance* with subsection (a)(2))," as provided by the federal blueprint at 40 CFR 51.165(f)(11)(ii) and the corresponding provision in Section 204.1870(b). (*Emphasis added*). The Agency recommends that "in accordance" be used in subsection (b) for consistency.

In subsection (c), the First Notice Version provides "the increased PAL level *in compliance with* the public notice requirements" rather than "the increased PAL level *pursuant to* the public notice requirements" as set forth in the federal blueprint at 40 CFR 51.165(f)(11)(iii). A review of the corresponding section in Part 204 reveals, "the increased PAL level *under* the public notice requirements," was used in Section 204.1870(c) and was SIP-approved by USEPA. Given the term "under" has been SIP-approved in this context by USEPA, the Agency would recommend the term "under" be used in the corresponding provision in Section 203.2380(c) for consistency with existing Part 204. (*Emphasis added*).

Section 203.2390 Monitoring Requirements[98]

This section sets forth the monitoring obligations a PAL source must meet during the PAL effective period. Relevant to this discussion, subsection (b) identifies the minimum performance requirements for approved monitoring approaches that are acceptable when conducted in accordance with subsections (c) through (i). These include mass balance

[97] 40 CFR 51.165(f)(11) and 35 Ill. Adm, Code 204.1870.

[98] 40 CFR 51.165(f)(12) and 35 Ill. Adm. Code 204.1880.

calculations for activities using coatings or solvents, CEMS, CPMS or PEMS, and emission factors. The subsection header in subsection (b) of the First Notice Version differs from the corresponding subsection headers in Section 204.1880(b) and the federal blueprint at 40 CFR 51.165(f)(12)(ii). The subsection header should include the term "Minimum" and the remainder of the terms in the header should be capitalized to read, "*Minimum P*erformance *R*equirements for *A*pproved *M*onitoring *A*pproaches." (*Emphasis added*). By not including the term "minimum" the First Notice Version would change the meaning of subsection (b) and would deviate from the federal blueprint and the corresponding provision in Part 204.

The subsection header in subsection (c) of the First Notice Version differs from the corresponding subsection headers in Section 204.1880(c) and the federal blueprint at 40 CFR 51.165(f)(12)(iii). The subsection header should be capitalized to read, "Mass *B*alance *C*alculations." (*Emphasis added*).

Subsection (d) provides that an owner or operator using CEMS to monitor PAL pollutant emissions shall meet the requirements of this subsection. For consistency between the corresponding sections of Part 203 and Part 204, Section 203.2390(d)(1) should make reference to Section 203.1000. Subsection (d)(1) should read "40 CFR Part 60, Appendix B *(incorporated by reference in Section 203.1000)."* (*Emphasis added*).

The subsection header in subsection (f) of the First Notice Version differs from the corresponding subsection headers in Section 204.1880(f) and the federal blueprint at 40 CFR 51.165(f)(12)(vi). The subsection header should be capitalized to read, "Emission *F*actors." (*Emphasis added*).

Subsection (i) sets forth the requirements for revalidating the data used to establish the PAL pollutant. A review of the corresponding subsection (i) in Section 204.1880 reveals that the

terms "re-validation" and "re-validated" were, respectively spelled, "revalidation" and "revalidated." For consistency, the Agency would recommend that these terms be spelled the same for purposes of Part 203. In subsection (i), the First Notice Version provides "*Re-validation* must occur at least once every 5 years" rather than "*Such testing* must occur at least once every 5 years" as set forth in the federal blueprint at 40 CFR 51.165(f)(11)(ix). A review of the corresponding section in Part 204 reveals, "[*t*]*he testing* must occur at least once every 5 years," was used in Section 204.1880(i) and was SIP-approved by USEPA. Given the phrase, "the testing," has been SIP-approved in this context by USEPA, the Agency would recommend the phrase, "the testing," be used in the corresponding provision in Section 203.2390(i).

Section 203.2410 Reporting and Notification Requirements[99]

Section 203.2410 would provide the reporting and recordkeeping obligations a PAL source must meet during the PAL effective period. Consistent with the federal blueprint at 40 CFR 51.165(f)(14) the owner or operator shall submit semi-annual monitoring reports and *prompt* deviation reports, meeting the requirements in subsections (a) through (c), to the Agency in accordance with the Clean Air Act Permit Program (CAAPP). (*Emphasis added*). The First Notice Version did not include the term "prompt" with the corresponding phrase "deviation reports." To the extent that these changes may alter Part 203 in a way that is less stringent than or contradictory to USEPA's requirements in 40 CFR 51.165 they threaten the approval of Part 203 as part of Illinois' SIP. The Agency requests that the term "prompt" be included in Section 203.2410.

The First Notice Version replaces "in accordance with" with "in compliance with" in Section 203.2410 inconsistent with the use of "in accordance with" in 40 CFR 51.165(f)(14) and

[99] 40 CFR 51.165(f)(14) and 35 Ill. Adm. Code 204.1900.

the corresponding provision in Part 204, Section 204.1900. The Agency recommends that "in accordance with" be included for consistency with the federal blueprint and Part 204.

Subsection (a) details the informational requirements for the semi-annual report that shall be submitted to the Agency within 30 days of the end of each reporting period. Subsection (a)(1) specified certain information that must be included in the semi-annual report, specifically the identification of owner and operator and the permit number. For consistency with the federal blueprint at 40 CFR 51.165(f)(14)(1)(A) and Section 204.1900(a)(1), the Agency would recommend not deviating from the following language, "~~The~~ *I*dentification of ~~the~~ owner and operator and the permit number." (*Emphasis added*).

Section 203.2500 Applicability[100, 101]

Section 203.2500 addresses the applicability of Section 203, Subpart R to new major stationary sources and major modifications in attainment and unclassifiable areas. In particular, no person shall begin actual construction of a new major stationary source or major modification if the emissions from the major stationary source or major modification would cause or contribute to a violation of any NAAQS except in compliance with Subpart R. In subsection (a) of the First Notice Version, "must" replaced "shall" and other changes were made to accommodate the use of this auxiliary verb. The Agency requests that subsection (a) be consistent with the federal blueprint and its general approach to the use of "shall."

In subsection (b), the First Notice deviates from the federal blueprint at 40 CFR 51.165(b)(4) by removing the phrase "with respect to a" from the phrase "*with respect to a* particular pollutant if the owner or operator demonstrates . . ." (*Emphasis added*). While this

[100] As previously discussed, the First Notice Version makes reference to "Section 203.2430 Applicability" when reference should have been made to "Section 203.2500 Applicability."

[101] 40 CFR 51.165(b)(1) and (4).

phrase may initially appear extraneous, this phrase helps clarify the applicability of Subpart R. In this instance, it means to introduce a new point not related to the previous discussion (i.e., that this Subpart does not apply to a major stationary source or major modification with respect to a particular pollutant if that particular pollutant is located in a nonattainment area differing from those projects that would be located in an area designated as attainment or unclassifiable that cause or contribute to a NAAQS violation in that area). The Agency recommends that subsection (b) be consistent with the federal blueprint.

Section 203.2520 Requirements[102]

Section 203.2520 provides that an owner or operator shall reduce the impact of its emissions on air quality by obtaining emission reductions to, at a minimum, compensate for its adverse ambient impact when the major stationary source or major modification would otherwise cause or contribute to a violation of a NAAQS. Subsection (a) of the First Notice Version removes the phrase "at a minimum" from the phrase "by obtaining sufficient emissions reductions to, *at a minimum*, compensate for its adverse ambient impact," deviating from the federal blueprint at 40 CFR 51.165(b)(3). The phrase "at a minimum" is used to emphasize that there may be other things to consider but this particular item listed is essential. *Accord., Merriam-Webster Dictionary.* By removing the phrase "at a minimum," the First Notice Version would change the meaning of subsection (a) and would deviate from 40 CFR 51.165(b)(3).

Part 204

For 35 Ill. Adm. Code Part 204, Prevention of Significant Deterioration or PSD, IERG and the Agency proposed to address necessary revisions to Part 204 as identified by USEPA in its proposed approval of Part 204 by addressing these omissions or typographical errors in Part

[102] 40 CFR 51.165(b)(3).

204 in conjunction with this Part 203 regulatory proposal. In addition, IERG proposed to revise Part 204 to memorialize PEA as it currently exists with emissions decreases as well as increases considered in Step 1 of the applicability determination process for a modification if the emission decreases are part of the project. Again, emission decreases that are unrelated to the project would not be considered in Step 1 under PEA but may be available in Step 2 (contemporaneous netting).

While these were the only proposed revisions to Part 204, changes to already USEPA-approved language in Part 204 that is now part of Illinois' SIP were also proposed in the First Notice Version. Similar to Part 203, "must" is also proposed to replace "shall" in 35 Ill. Adm. Code 204.490(b) and (c), 35 Ill. Adm. Code 204.800(f) and 35 Ill. Adm. Code 204.930(b)(4) and (e); "will" replaced "shall" in 35 Ill. Adm. Code 204.490(c)(9) and (d); and "may" is proposed to replace "shall" in 35 Ill. Adm. Code 204.800(c) of the First Notice Version. In addition, "such" was similarly proposed to be replaced by "the" in 35 Ill. Adm. Code 204.930(d) of the First Notice Version.[103] Notably, the language of subsection (d)(2) read "*[s]uch* redesignation is

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[103] In the context of Part 204, the Board has already considered use of the word "shall" versus the use of the word "must," replacing the word "such" with other words and inserting or removing commas inconsistent with the federal blueprint. The Board previously found as follows:

> IEPA persuasively cites authorities that a proposed PSD permit program must "mirror" the federal program and be approvable by USEPA as a SIP revision. IEPA comments in detail that the first notice version of Part 204 includes changes that are not consistent with the federal rules and may jeopardize USEPA's approval of Part 204 as a SIP revision.
>
> These changes include those that the Board may generally propose to clarify or simplify its rules. Others may be changes commonly requested by JCAR. However, the Board agrees with IEPA that Section 9.1(c) obligates the Board to follow the federal PSD rules with the ultimate purpose of adopting a program USEPA will approve as a SIP revision. Based on the specific statutory authority applicable to this rulemaking, the Board generally agrees with IEPA's comment on changes in its first-notice version of its proposal. *See* PC 8 at 10-66. In its section-by-section summary of those comments below, it addresses IEPA's comment more specifically.

In the Matter of: Proposed New 35 Ill. Adm. Code 204, Prevention of Significant Deterioration, Amendments to 35 Ill. Adm. Code Part 101, 105, 203, 211 and 215, R19-1, pages 4 - 7 (June 18, 2020).

proposed after consultation . . ." (*Emphasis added*). The First Notice Version revised "such redesignation" to "the redesignation," inconsistent with the language of 40 CFR 51.166(g)(4)(ii). Notably, the historic language of 35 Ill. Adm. Code 204.930(d) is consistent with the requirements for a SIP submittal as set forth in 40 CFR Part 51.166 and has already been approved by USEPA.

As Part 204 currently exists in Illinois, it has been found by the USEPA to meet the requirements of 40 CFR 51.166 for SIP approval of a program satisfying Section 165 of the CAA. To the extent that these changes may alter Part 204 in a way that is contradictory to USEPA's requirements in 40 CFR 51.166, the USEPA's blueprint rule for PSD permit programs, they threaten the historic approval of Part 204 as part of Illinois' SIP. In any case, gratuitous changes to Part 204 will likely act to complicate and delay USEPA's review of Part 203 and its update of Illinois' NA NSR rules. This is because Part 204 must also satisfy USEPA's requirements and all changes that are made to Part 204 will also need to be reviewed by USEPA for its approval.

Section 204.380 Excessive Concentration[104]

In the First Notice Version, changes were made to the definition of "Excessive concentration" in Section 204.380, which is defined relative to determining good engineering practice stack height as addressed by Section 204.420. In this section, the First Notice Version does not include the phrase, "the purpose of," in the definition of "Excessive concentration" and, as such, is inconsistent with definition of "Excessive concentration" in 40 CFR 51.100(kk). This definition should continue to read, "'Excessive concentration' is defined for *the purpose of*

[104] 40 CFR 51.100(kk).

determining good engineering practice stack height under . . ." The Agency recommends that the definition of "Excessive concentration" be consistent with this term in the federal PSD rules as currently reflected in existing Part 204.

Section 204.490 Major Modification[105]

Section 204.490 is the definition for "Major modification." In subsections (b) and (c), "shall" is, again, changed to "must" in the First Notice Version. As previously discussed, the Agency recommends reinserting "shall" in (b) and (c) as well for clarity and consistency with the federal PSD rules.

In subsection (c), nine activities are specified that are not considered a physical change or change in the method of operation. Meanwhile, subsection (d) provides that this definition of "major modification" does not apply to a particular regulated NSR pollutant when complying with a PAL for that pollutant. At the end of subsection (c)(9) and in two instances in subsection (d), "shall" was replaced by "will" in the First Notice Version. For those reasons that were discussed earlier, the Agency recommends reinserting "shall" in lieu of "will" in subsections (c) and (d). In addition, the phrase "with respect" was removed from subsection (d) in the First Notice Version so that it no longer reads, "This definition *shall* not apply *with respect to* a particular regulated NSR pollutant . . ." While this phrase may initially appear extraneous, this phrase makes clear the context in which the definition of "major modification" is to be considered. In this regard, it introduces a new point not related to the previous discussion. The Agency recommends that subsections (c) and (d) in the definition of "Major modification" be consistent with the federal PSD rules.

Section 204.800 Applicability[106]

[105] 40 CFR 51.166(b)(2) and 52.21(b)(2).
[106] 40 CFR 51.166(a)(7) and 52.21(a)(2).

This Section addresses the applicability of Part 204 to a proposed major source or major modification. In particular, subsection (c) provides that no new major stationary source or major modification to which the requirements of Sections 204.810, 204.820, 204.830, 204.840, 204.850, 204.1100, 204.1110, 204.1120, 204.1130, 204.1140, and 204.1200 apply shall begin actual construction without a permit indicating that the source or modification will meet those requirements. The Agency observes that the word "shall" has been replaced by "may" in subsection (c). As previously discussed, without a guide to explain the basis for the change in usage, it can only be presumed that this change is meant to be substantive in nature. Even if merely grammatical, this change in wording is problematic as it deviates from the blueprint at 40 CFR 51.166(a)(7)(iii) and existing language of SIP-approved Section 204.800(c). The Agency also notes that subsection (d) in the First Notice Version would alter the existing language of SIP-approved Section 204.800(d) without accompanying explanation for the change.

In Section 204.800(g), the phrase "with respect" has been removed from the First Notice Version. The Agency would request that the phrase "with respect" be included in Section 204.800(g) as it helps clarify the context in which the provisions of 35 Ill. Adm. Code 203, Subpart R apply. In this instance, it means to introduce a new point not related to the previous discussion, i.e., earlier discussion pertained to the applicability of 35 Ill. Adm. Code Part 204 to a new major stationary source or major modification located in an attainment or unclassifiable area versus the applicability of 35 Ill. Adm. Code 203, Subpart R to a new major stationary source or major modification located in an attainment or unclassifiable area which would cause or contribute to a violation of any NAAQS.

The First Notice Version also neglected to include proposed language addressing the applicability of Subpart R to a major modification located in an attainment or unclassifiable area

which would cause or contribute to a NAAQS violation in subsection (g). The Agency would request that Section 204.800(g) read as follows:

> The provisions of 35 Ill. Adm. Coe 203, Subpart R apply *with respect* to any regulated NSR pollutant emitted from the construction of any new major stationary source as defined in *35 Ill. Adm. Code 203.1230(a)(8) or any major modification as defined in* 35 Ill. Adm. Code 203.1220 in an area designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA (42 USC 7407(d)(1)(A)(ii) or (iii)) if the emissions from the major stationary source or major modification would cause or contribute to a violation of any NAAQS.

(*Emphasis added*).

Section 204.930 Redesignation[107]

Subsection (a) of Section 204.930, "Redesignation," provides that as of the initial effective date of Part 204, all areas of the State except as provided by Section 204.920 are designated Class II as of December 5, 1974. Redesignation (except as precluded by Section 204.920) may be proposed by the State or Indian Governing Bodies. IERG's proposal as agreed to by the Agency mirrored the applicable federal PSD rules providing that any redesignation requests may be proposed by the State or Indian Governing Bodies. However, the First Notice Version would replace "in accordance with" with "in compliance with" in existing subsection (b)(1) inconsistent with the usage of "in accordance with" in 40 CFR 52.21(g)(1). This approach not only deviates from the applicable federal PSD rules but may act to complicate and delay USEPA's review of Part 204. In this regard, it is noteworthy that no such redesignations have yet occurred so that any such redesignations would occur in the future. The Agency recommends that "in accordance with" be included for consistency with 40 CFR 52.21(g).

[107] 40 CFR 51.166(g) and 52.21(g).

WHEREFORE, for the reasons stated above the Agency respectfully submits the above comments and requests that the Board clarify its final opinion and order consistent with the Agency's comments offered herein.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Sally A. Carter

Sally Carter
Assistant Counsel
Division of Legal Counsel

DATED: June 17, 2024

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

STATE OF ILLINOIS)
) **SS**
COUNTY OF SANGAMON)
)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following: I have electronically served the attached, **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION FOR WAIVER OF REQUIREMENTS and ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S COMMENTS REGARDING THE FIRST NOTICE VERSION OF THE PROPOSED RULE** on June 17, 2024, to the following:

Don Brown – Clerk
Illinois Pollution Control Board
100 W. Randolph St, Suite 11-500
Chicago, IL 60601-3218
Don.Brown@illinois.gov

Daniel Pauley
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601
Daniel.Pauley@illinois.gov

N. LaDonna Driver
Melissa Brown
HeplerBroom LLC
4340 Acer Grove Dr.
Springfield, IL 62711
LaDonna.Driver@heplerbroom.com
Melissa.Brown@heplerbroom.com

Deborah Williams
City of Springfield
Regulatory Director
800 E. Monroe
Office of Public Utilities
Springfield, IL 62757
deborah.williams@cwlp.com

Kathryn A Pamenter
Jason James
Assistant Attorneys General
Office of the Attorney General
100 West Randolph Street, Suite 120
Chicago, IL 60601
Kathyrn.Pamenter@ilag.gov
Jason.James@ilag.gov

I have electronically served and deposited said document in the United States Mail, proper postage prepaid, in Springfield, and upon:

Renee Snow
General Counsel
Office of Legal Services
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271
renee.snow@illinois.gov

My e-mail address is sally.carter@illinois.gov.

The number of pages in the e-mail transmission is 108.

The e-mail transmission and depositing said document in the United States Mail took place before 5:00 p.m. on June 17, 2024.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Sally A. Carter

Sally Carter
Assistant Counsel
Division of Legal Counsel

Dated: June 17, 2024

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544