provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 14, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's source-specific RACT requirements to control NO_X from the Armco Inc., Butler Operations Main Plant and Armco Inc., Butler Operations Stainless Plant may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(175) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(175) Revisions pertaining to NO_X RACT determinations for the Armco Inc., Butler Operations Main Plant and Armco Inc., Butler Operations Stainless Plant, submitted by the Pennsylvania Department of Environmental Protection on January 21, 1997.

(i) *Incorporation by reference.*

(A) Letter submitted on January 21, 1997 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT plan approvals in the form of permits.

(B) Permit Number: PA 10–001–M, effective February 23, 1996, for the Armco Inc., Butler Operations Main Plant in Butler, Butler County.

(C) Permit Number: PA 10–001–S, effective February 23, 1996, for the Armco Inc., Butler Operations Stainless Plant in Butler, Butler County.

(ii) *Additional materials.* Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determination for the sources listed in paragraphs (c)(175)(i)(B) and (C) of this section.

* * * * *

[FR Doc. 01–25572 Filed 10–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 165–2; FRL–7056–6]

Approval and Promulgation of Implementation Plans; Illinois Trading Program

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving the Illinois trading program, submitted on December 16, 1997. This program is a cap and trade program, designed to reduce emissions of volatile organic compounds (VOC) in the Chicago ozone nonattainment area below the levels required by reasonably available control technology (RACT) and other regulations. Illinois requires participation by major industrial VOC sources. Each participating source must hold allowances equivalent to its emissions, and Illinois issues allowances to each source equivalent to 12 percent less than baseline actual emissions. Sources may buy and sell allowances, thereby redistributing allowable emissions, but the sum of emissions from the sources involved must in any case reflect a 12 percent reduction from total baseline levels. USEPA reviewed Illinois' estimates of program benefits and concluded that the program would reduce VOC emissions by 10.9 tons per day.

On December 27, 2000, at 65 FR 81799, USEPA proposed to approve this program provided Illinois satisfactorily resolved five issues. Illinois' response to the proposed rulemaking resolved four of these issues, by clarifying the timetable for suitable enforcement authority, satisfying USEPA's environmental justice policy, prohibiting credit issuance to minor sources in the absence of an area-wide net emissions decrease (''demand shifting''), and committing to remedy any problems identified in its annual program review. Illinois addressed the fifth issue by a letter to USEPA dated August 23, 2001. In this letter, Illinois requested that USEPA defer rulemaking on section 205.150(e), which exempts new sources that satisfy the trading program's seasonal offset requirements from the requirement for full year offsets. Because USEPA is deferring rulemaking on this section, the State Implementation Plan (SIP) continues to require full year offsets, satisfying the fifth prerequisite for program approval.

USEPA received multiple comments on its proposed rulemaking, regarding

environmental justice, ''open market trading program'' features of the Illinois program, and numerous other topics. USEPA believes that the Illinois program is designed to make environmental justice problems unlikely, and believes that Illinois has suitable processes for identifying and remedying such problems should they occur. USEPA further believes that Illinois is providing suitable information to the public and is providing suitable opportunities for public input, and believes that Illinois has satisfied USEPA's environmental justice policy in other respects as well. USEPA is satisfied that the Illinois program is fundamentally a cap and trade program and cannot in any significant way be considered an open market trading program. After reviewing the various comments, and aside from one section of Illinois' rules (pertaining to offsets for new sources and major modifications) for which USEPA is deferring rulemaking, USEPA has concluded that the Illinois program satisfies relevant guidance and Clean Air Act requirements.

EFFECTIVE DATE: This action will be effective on November 14, 2001.

ADDRESSES: Copies of Illinois' submittals and other information are available for inspection during normal business hours at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, (*summerhays.john@epa.gov*).

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. What did USEPA propose?
II. What comments did USEPA receive?
III. How did Illinois EPA respond to prerequisites for approval?
IV. What are USEPA's responses to comments?
1. Environmental justice comments
2. Comments on ''open market trading features''
3. Additional comments by NRDC et al.
4. Additional comments by ED dated March 26, 2001
5. Additional comments by ED dated January 26, 2001
6. Additional comments by Alex Johnson
7. Additional comments by Richard Kosobud
8. Additional comment by IEPA
V. What action is USEPA taking?
VI. Administrative Requirements

I. What Did USEPA Propose?

USEPA proposed to approve the Illinois trading program provided that Illinois took five specified actions. In particular, USEPA proposed that Illinois must: (1) Clarify the timeline and penalties for violating sources, (2) satisfy USEPA's trading program policy on environmental justice, (3) provide for full-year offsets for new sources and major modifications, (4) commit to discount credits where emission reductions are potentially accompanied by emission increases elsewhere, and (5) commit to remedy any problems identified in its periodic program review.

USEPA published its notice of proposed rulemaking on December 27, 2000, at 65 FR 81799. This notice included an extensive description of the Illinois trading program, followed by a discussion of the criteria USEPA used to review the program, a review of the features of the Illinois program, and a review of the emission reductions attributable to the program.

In brief, the Illinois trading program is a cap and trade program designed to reduce emissions of volatile organic compounds (VOC) in the Chicago ozone nonattainment area. Major VOC sources, i.e. industrial facilities emitting at least 25 tons per year, including at least 10 tons between May and September, are required to participate. Each such source must determine its baseline actual emissions. The state issues allowances generally equivalent to 12 percent less than the baseline emissions.

The principal compliance obligation upon sources is to hold allowances at least equal to emissions each year. Sources have several options for complying with this requirement. The first option is simply to reduce emissions to 12 percent below baseline emissions. Under this option, the source has no need to buy or sell allowances. A second option is to reduce emissions more than 12 percent below baseline emissions. Under this option, the source would receive more allowances from the state than it would need to accommodate its emissions, and the source could choose to sell the excess allowances. A third option is to reduce emissions less than 12 percent below baseline emissions or even increase emissions. This option would require purchase of allowances, presumably from a source that under the second option reduced its emissions enough below its target 12 percent reduction level to accommodate the excess emissions of the purchasing source, i.e., the amount by which the purchasing sources exceeds its target, 12 percent reduced, emission level.

The third option creates concern about environmental justice. This concern arises because some of the VOC emissions include hazardous air pollutants (HAPs). Particularly at issue is the potential for increased emissions of HAPs in low income and minority communities and other communities of concern. In one form of this issue, the fact that companies not only may fail to achieve 12 percent emission reductions but may in fact increase emissions means that the program allows increases of emissions of VOC and potentially of HAPs. Another form of this issue reflects concern that even when a source reduces emissions by an amount short of 12 percent, the source may be viewed as reducing its HAPs emissions by less than it should. This concern is discussed in the notice of proposed rulemaking. Because several commenters commented on this issue, a later section of this document discusses this issue at length.

II. What Comments Did USEPA Receive?

USEPA received nine comment letters. Because the initial comment period closed before being reopened, some groups sent comments on both January 26, 2001, and March 26, 2001. USEPA received the following comment letters from the following groups:

Citizens for a Better Environment (CBE)/ American Lung Association of Metropolitan Chicago (ALAMC)—comments sent March 26, 2001

Environmental Defense (ED)—comments sent January 26, 2001, and comments sent March 26, 2001

Illinois Environmental Protection Agency (IEPA)—comments sent March 26, 2001

Alex Johnson—comments sent March 27, 2001

Richard Kosobud (professor at University of Illinois at Chicago)—comments sent March 22, 2001

Natural Resources Defense Council (NRDC)/CBE/ALAMC/Public Employees for Environmental Responsibility (PEER)—comments sent January 26, 2001

NRDC/ALAMC—comments sent March 26, 2001

PEER—Comments on several open market trading programs sent March 9, 2001

The letter from IEPA focuses on the issues identified in the notice of

proposed rulemaking for the state to address. These issues are addressed in a separate section immediately following. The section after that will address one additional comment by IEPA and comments from the other commenters.

Several commenters identified concerns regarding the potential that trading of volatile organic compound emissions has to increase emissions of HAPs in areas already overburdened with emissions of HAPs, one form of an issue known as the environmental justice issue. In addition, several comment letters presented the view that the Illinois program has features of open market-type trading programs, and commented that these features create a variety of problems. For clarity, the section of this notice addressing comments has a subsection for each of these two topics addressing all comments on each topic. Since the remainder of the comments cannot be so readily categorized, the remaining comments will be addressed in subsections organized by commenter.

The comments submitted by NRDC and ALAMC on March 26, 2001, generally include the comments submitted by NRDC, CBE, ALAMC, and PEER on January 26, 2001. For convenience, these comment letters will be addressed jointly, and this notice will refer to these commenters as NRDC et al.

III. How Did Illinois EPA Respond to Prerequisites for Approval?

As noted previously, USEPA proposed to approve the Illinois trading program provided Illinois resolved five issues. Illinois' comment letter addresses each of these issues in turn. The following discussion identifies Illinois' actions and USEPA's review for each of these five items in the same order.

The first prerequisite for approval was that Illinois clarify the timeline and penalties for violating sources. Illinois provided this clarification. Illinois noted the need to complete the process of accounting for one ozone season's emissions before the next ozone season begins, and the state's comments include a detailed schedule by which such accounting is achieved.

In Illinois' program, if a source fails to hold sufficient allowances by December 31 to accommodate their emissions that ozone season, it must provide ''excursion compensation.'' Illinois identifies and notifies these sources within about a week of December 31. Pursuant to section 205.720, sources must compensate for the excess emissions plus a 20 percent (or, for repeat offenders, 50 percent) surcharge. Sources may ask within 15 days that this 120 percent (or 150 percent) compensation be taken in the form of a reduction of the next year's issuance of allowances. Alternatively, 20 days after notifying the source of its excess emissions, Illinois sends the source a bill for the purchase of the necessary allowances from the State's special compliance fund. If the company has not paid this bill within 45 days, the source is in violation.

For example, if a source receives notification of an emissions excursion on January 7, it would have until January 22 to request the requisite deduction from the upcoming issuance of allowances. In absence of such a request, Illinois would send the source a bill on January 27 for the then mandatory purchase of allowances. Assuming 2 days for delivery of this bill, the source would have until March 15 to pay the bill. After that date, if the source has not paid its bill, the source would be in violation and traditional enforcement action could begin. Violating sources are liable for full enforcement authorized under Clean Air Act section 113, including penalties up to $27,500 per day.

This schedule is consistent with the schedule inferred by USEPA in its proposed rulemaking. USEPA finds this a suitable timetable for enforcement action with penalties sufficient to deter noncompliance.

The second prerequisite for approval was that Illinois satisfy USEPA's policy on environmental justice. In particular, USEPA noted a need for Illinois to ''commit to review effects of the trading program on the distribution of hazardous air pollutant emissions in its annual program review, distribute that review for public comment, and commit to address any identified problems. Illinois noted that its rule in fact requires the state to conduct the review sought by USEPA (including reviewing program effects on ''trends and spatial distributions of hazardous air pollutants'' (cf. section 205.760(a)(9)) and to make the report available to all interested parties. Illinois committed to widespread distribution of the report, sending copies to everyone that expressed interest in the program and making the report available on its internet site.

Illinois described its ongoing efforts for continuing public review during the implementation of the program. Illinois noted in particular the proposal of a rule to require HAPs emissions reporting so that the impact of the program on HAPs emissions can be analyzed more precisely. Finally, Illinois committed in its letter to address any problems identified in its annual program review. These statements satisfy the second prerequisite for approval, and lead USEPA to conclude that Illinois has satisfied USEPA's environmental justice policy for trading programs. Subsequent sections of this notice provide further discussion of environmental justice issues.

The third prerequisite for approval was that Illinois modify its new source requirements to assure that emission reductions (from any time during the year) be obtained to offset the full year emissions from new sources and major modifications in the Chicago area. Illinois' comment letter, dated March 26, 2001, objects to this proposed USEPA view and argues that providing offsets on an ozone season basis is fully consistent with the Clean Air Act and should be approved by USEPA.

Subsequently, on August 23, 2001, Illinois amended its rulemaking request, requesting that USEPA conduct rulemaking on section 205.150(e) separately from rulemaking on the remainder of Part 205. Section 205.150(e) states that major new sources and sources with major modifications that obtain the necessary allotment trading units (ATUs, providing offsets on a ozone season basis) are considered to satisfy applicable offset requirements (otherwise requiring offsets on a full year basis).

USEPA is in fact deferring action on section 205.150(e). By this deferral, USEPA is excluding the exemption from and retaining the requirement for full year offsets. Thus, pending further rulemaking on section 205.150(e), the prerequisite for program approval is satisfied because the approved SIP continues to require offsets on a full year basis.

USEPA is continuing to review whether Illinois may provide offsets on an ozone season basis. USEPA has solicited comments on a proposed view that Illinois must require full year offsets and is not soliciting comments on this issue at this time. Depending on the results of its review, USEPA intends either to publish final disapproval or proposed approval of section 205.150(e).

The fourth prerequisite for approval was that Illinois avoid issuing credits for ''demand shifting,'' i.e., that Illinois assure that no credits would be issued to the extent an emission reduction at one source simply reflects a shift in production to another source that is not accountable for its emission increase. The notice of proposed rulemaking noted that Illinois' rules explicitly prohibit credit issuance to small industrial sources whose emissions may

be shifting to another small source in the area. However, the notice requested that Illinois commit to avoid credit issuance in cases of demand shifting involving commercial and mobile sources.

Illinois responded that its rules in fact already prohibit credit issuance to the extent mobile and area sources experience demand shifting. The rules provide for credit issuance only to the extent that emissions are reduced in the overall business sector. Thus, Illinois will issue no credits in cases where demand shifting results in no net emission reduction. This satisfies USEPA's concern.

The fifth prerequisite for approval was that Illinois commit to remedy any problems identified in its periodic program review. Illinois noted that the periodic program review was intended to help fulfill the purpose of identifying and thus facilitating resolution of problems. Illinois then stated that ''Illinois EPA is committed to addressing any problems'' identified in the annual program review or identified elsewhere. USEPA is satisfied with this commitment.

IV. What Are USEPA's Responses to Comments?

1. Environmental Justice Comments

Comment: Several commenters expressed concern that Illinois' program has the potential to foster redistributions of emissions causing areas already having excessive air pollution to become exposed to even more emissions. These commenters recognize that Illinois' program targets emissions of volatile organic compound (VOC) emissions; their concern focuses on the components of VOC such as benzene that are hazardous. All commenters addressed this concern.

NRDC et al., quote from Executive Order 12898 (requiring agencies to assure environmental justice) and quote the description of the issue that USEPA provided in its notice of proposed rulemaking (65 FR 81804, December 27, 2000). NRDC et al., further quote USEPA's proposed view that features such as Illinois' emissions cap ''help assure that a participating source would be unlikely to increase its HAP emissions to unacceptable levels.'' NRDC et al., find this a ''reprehensible failure by USEPA to recognize the disproportionate potential risk that adjacent communities are being forced to accept from increased HAP emissions made possible under the Illinois Trading Program.''

NRDC et al., dispute USEPA's view that the public has had ''suitable opportunities to provide informed input into the development and implementation of the program.'' NRDC et al., cite several examples of gaps in public information. According to these commenters, Illinois has provided no information as to how emissions information for HAPs will be tracked, and no agreement has been reached on how the Annual Report will address HAPs emissions information.

NRDC et al., state that Illinois had sufficient information to consider the control costs of the finite number of program participants and thereby to assess ''the shifts in emissions reductions likely to occur.'' NRDC et al., have no doubt that some of these sources are in ''communities disproportionately comprised of low income and/or minority populations * * * already overburdened with pollutants.'' NRDC et al., state that ALAMC raised these concerns during Illinois' development of its rule. In NRDC et al.'s, view, IEPA had the data ''to anticipate and protect against the shifting of the burden of HAPs into [communities of concern], IEPA had the responsibility to provide such an analysis, and USEPA has the responsibility to require such an analysis.

CBE/ALAMC comment that ''we agree with USEPA'' that one may be concerned about ''the potential [this] program has to worsen air quality in any location.'' CBE/ALAMC then argue that low income and minority communities will be most likely to be subject to such disparate impacts, because these communities ''tend to live in the vicinity of older stationery sources [that are] most likely to * * * 'buy' their way out of [emission reduction requirements].''

IEPA supports USEPA's policy and the proposed views on the Illinois program. IEPA observes that its trading program imposes requirements for reductions of emissions below the levels permissible under other regulations, and allows no emissions that are prohibited by other regulations. IEPA agrees with USEPA that the Illinois program for this and other reasons is unlikely to yield localized increases in HAPs emissions.

IEPA describes the workgroup of interested parties that has led to proposed rule revisions to require enhanced reporting of hazardous air pollutant emissions by program participants, demonstrating the continuing involvement of the public in review of the program during its implementation. IEPA observes that the program provides an annual program review, which IEPA commits to provide ''to all members of the public that have expressed interest'' and to make the report available via its Internet site. IEPA further commits to address any problems identified during this review.

ED observes that emissions trading can help address environmental justice concerns. ED states that cap and trade programs hold sources directly accountable for their overall emission levels and are likely to outperform command and control regulations in achieving sustained reductions in emissions. ED observes that ''the cost-savings and flexibility produced through emissions trading [allows] policy-makers [to] set more ambitious emissions reduction requirements''. ED cites particular benefits to programs that pursue substantial reductions, for example to achieve air quality standards. ED states that emissions trading markets can stimulate emissions overcontrol and encourage environmental innovation, benefitting all affected populations including communities of concern.

ED comments that ''the fundamental economic benefit of emissions trading allowing environmental objectives and mandates to be met more cost-effectively'' are particularly important to communities of concern because ''they are, arguably, most in need both of protection from environmental threats and of access to economic opportunity, the development of which can be blunted by unnecessarily costly emissions control programs.'' ED states further that command and control-based limitations are inevitably subject to political considerations, which can be affected by the socio-economic status or racial or ethnic identity of the affected populations, whereas emissions trading programs all but eliminate the role of political discretion.

Finally, ED comments on the benefits of ''transparency,'' i.e., that the trading program enhances public knowledge of existing problem areas and whether emissions trading is having beneficial or detrimental effects in particular areas. ED states ''[i]t is difficult to know a priori'' how emission trades themselves will affect communities of concern, and so ED believes it is incumbent on Illinois to obtain data on program results and to identify ''sound analytical methods to be used in assessing the performance of the program as it affects communities of concern.'' ED believes that ''assessing individual trades is likely to be misleading * * *, while assessing overall program impacts will be key to understanding its effects on communities of concern.'' ED concludes that this process will also help Illinois identify remedies if the program is found to cause disparate impacts.

Kosobud notes that fundamentally, as a result of the trading program, ''[e]veryone in the region benefits from cleaner air''. Kosobud addresses concerns ''that trading could cluster emissions in certain neighborhoods. [His] appraisal of the early results indicates no such clusters have occurred.'' While noting that further information on HAPs emissions will provide a better basis for assessing this question in the future, Kosobud observes that potential impacts are limited because sources remain ''subject to traditional regulation including the more rigorous rules for HAPs'', and sources ''have discretion only for'' the 12 percent reduction requirement of the trading program.

PEER comments on the environmental justice impacts of open market trading. These comments are addressed in the next section, concerning comments relating to open market trading.

Response: Comments regarding environmental justice generally involve an implicit comparison. The first step in responding to these comments is to define the comparison. Most commenters appear to be comparing conditions after the program begins to conditions before the program begins. For example, NRDC et al., express concern about the potential for ''increased HAP emissions made possible by the Illinois trading program.''

Comparing emissions before and after program start-up includes changes over time that are not effects of the program. For example, a source may increase production over time without installing pollution controls. This would yield an emission increase that would be included in a comparison of before versus after program start-up that should not be attributed to the program.

A more appropriate comparison is to compare prospective emissions after program startup to prospective emissions at the same time assuming no program. This comparison actually assesses the impact of the program, assessing whether the trading program can yield emission increases that would not otherwise be allowed.

Current programs allow emissions to increase. The Illinois trading program does not allow any emissions increases that are not allowable under other applicable regulations. With the trading program just as without it, emissions per unit production may not increase above levels reflecting reasonably available control technology (RACT). The trading program also provides no incentive to increase emissions; no source would increase emissions simply because Illinois has adopted a trading program. In fact, the trading program provides strong incentives against emission increases, both because the program requires that most sources reduce emissions and because the trading program imposes a cost for purchasing credits that discourages emission increases. Therefore, USEPA concludes that a comparison based on projected emissions would show no sources having greater emissions and numerous sources showing lesser emissions with versus without the trading program.

A second appropriate comparison is to compare the scenario involving the trading program against a scenario involving the same emission reductions achieved by alternative means. This begs the question of how the alternative reductions are obtained.

One form of this comparison is to define the alternative to reflect Illinois adoption of RACT regulations to achieve equivalent reductions. The usual presumption is that RACT regulations would yield a different distribution of reductions, with emissions being higher at some sources and lower at others. However, quantifying these differences is difficult at best. First, Illinois in its rule adoption process concluded that it could not identify RACT regulations that could achieve reductions equivalent to its trading program. More generally, no commenter identified a set of RACT regulations that could achieve equivalent reductions, and it is in fact questionable whether such a set of regulations can be identified. It is impossible to quantify how the reductions from an undefined RACT program would compare to the reductions from the Illinois trading program.

Second, even if one could define a RACT alternative, and assuming that one could then quantify the distribution of reductions from the alternative (as well as the increases due to production increases), the comparison would still require quantifying the distribution of reductions from the trading program. Such quantifying is difficult.

NRDC et al., argue that Illinois' economic impact analysis gave it solid data to project which sources were likely to purchase credits (i.e., emit more than baseline emissions minus 12 percent) and which sources were likely to sell credits (i.e., emit less than baseline emissions minus 12 percent). In USEPA's experience, such analyses do not yield data that are sufficiently reliable to conduct the type of assessment NRDC et al., seek. While economic impact analyses can give a useful estimate of the overall impact of a set of regulations, these analyses do not reflect the source-specific factors that would need to be considered to judge which particular locations might be most likely to experience net credit purchases. Consequently, USEPA does not require Illinois to conduct the type of analysis sought by NRDC et al.

Elsewhere in their comments, NRDC et al. argue that large swings in emissions could occur because ''the operations of market mechanisms are anything if not unpredictable.'' This latter comment contradicts their assertion that Illinois could have readily predicted source-specific shifts in emissions. In fact, assessing stability of aggregate emissions (for example by the examination of production data described in the notice of proposed rulemaking) is more feasible than predicting the future actions of individual sources.

One possibility is that the trading program would produce emission reductions identical to those that would be imposed via RACT rulemaking. RACT rulemakings tend to be dominated by issues of cost and feasibility. Illinois' trading program is designed to allow sources themselves to determine which combination of controls are feasible and can be achieved at least cost. Thus, in theory, the Illinois trading program could provide the same set of reductions that RACT rulemaking would seek to provide. In practice, the trading program provides incentive for process changes that may be very cost-effective but generally cannot be imposed by regulation. Thus, speculation on the difference between emission reductions with a trading program versus with a RACT regulation must include speculation on the extent to which sources in a trading program would reduce emissions via process changes versus installation of control equipment.

Another form of this comparison is to define the alternative scenario as one in which all sources subject to the trading program regulations instead must reduce emissions by no more or less than 12 percent. This alternative scenario is as if Illinois' regulation could be subdivided into an emission reduction component and a trading component, and removing the trading component. As compared to this alternative, the Illinois trading program will of course have higher emissions in some locations and lower emissions in other locations. However, USEPA believes that communities of concern (which are presumed to have disparate pollution burdens) are as likely to experience lower emission than higher emissions. In any case, it is doubtful that Illinois could have adopted a

regulation that required all sources to reduce emissions by 12 percent without option for trading. Therefore, an alternative constructed in this fashion is probably not a realistic alternative.

CBE/ALAMC and ED provide rationales by which the Illinois trading program would be likely to yield emission reductions that favor or disfavor communities of concern. CBE/ALAMC argues that communities of concern, in particular low income and minority communities, tend to have older sources that are prone to be difficult to control and that are therefore prone to have less emission reduction than other areas. ED observes that such communities will tend to fare better with a trading program than with traditional RACT-type regulations, because ''vulnerable populations' relative lack of political leverage'' will tend to be a more important factor in developing RACT-type regulations than in a trading program.

These comments by CBE/ALAMC and ED implicitly reflect comparison to alternative control scenarios that may not be realistic alternatives. Nevertheless, the annual program review will address the actual effects of Illinois' program.

USEPA agrees with Kosobud that preliminary evidence indicates that the program is providing relatively uniform reductions across the Chicago area. USEPA intends to continue to monitor the distribution of emission reductions that result from the Illinois trading program. If the program results in a problematic distribution of emission reductions, USEPA will request that Illinois remedy the situation.

Comment: CBE/ALAMC comment on USEPA's description of workgroup efforts to define the HAPs emissions information that sources must report and to define the information for Illinois to provide in its annual report. CBE/ALAMC disagree with USEPA's claim that the workgroup achieved consensus on emission reporting requirements. CBE/ALAMC observe that rule revisions to adopt these emission reporting requirements are being subject to unusual hearing requirements and have not been adopted even as the second year of the trading program begins. CBE/ALAMC note that the workgroup has had ''little, if any, discussion'' of how to analyze and report the information on HAPs emissions to be collected. CBE/ALAMC identify several questions that remain to be addressed, including whether the annual report will give community-specific information on trades and HAPs impacts, what opportunity the public will have to comment on the annual reports, and whether Illinois will address the public's comments and make any warranted program changes.

CBE/ALAMC express concern in particular that the workgroup has not defined what constitutes an environmental injustice. CBE/ALAMC describe and dispute an industry view that environmental injustice cannot be identified without a complete risk assessment. CBE/ALAMC argue instead that ''any community that is subject to an increase in HAPs [emissions]—or even a community whose HAP emissions are not reduced to the level commensurate with those that are being achieved in other communities—is suffering a disparate impact.''

CBE/ALAMC then note that even more difficult than defining environmental justice is addressing problems after they occur. CBE/ALAMC state that ''IEPA should have been required to address these issues before the program was implemented.'' CBE/ALAMC state that ALAMC urged during Illinois' rule development process that steps be taken to ''prevent the problem from happening in the first place.'' CBE/ALAMC now doubt ''that IEPA will be able to identify and mitigate any EJ or disparate impacts . . . in a timely manner, if at all. Not only do these potential problems need to be well defined, but a detailed course of action to correct them needs to be in place before USEPA should even consider approving this program.''

Johnson comments that Illinois ''fails to address several critical, common sense provisions'' of USEPA's guidance on environmental justice. Johnson states that ''Illinois has yet to propose and commit to an adequate program to evaluate [the program's] potential to increase exposures of selected populations to hazardous air pollutants.'' Johnson disputes USEPA's statement that the workgroup on the annual program review ''has achieved general consensus * * * to require companies to report emissions of individual HAPs''. Johnson believes that ''[n]o consensus * * * has been achieved. Rather, Illinois has only proposed a rule based upon divergent concerns.'' Finally, Johnson comments with respect to ''the most important element'' of USEPA's recent guidance, namely that the state must ''provide for an opportunity to remedy any problems that are identified following [program] startup''. Johnson expresses the view that a ''sounder * * * policy'' would go beyond providing an opportunity for mitigation and instead require actual mitigation, but Johnson objects that Illinois does not even provide the opportunity for mitigation.

Response: The primary purpose of this rulemaking is to evaluate the rules that Illinois submitted and the emission reductions that these rules are intended to achieve. Nevertheless, USEPA requires that states submitting trading programs that include VOC (and thus potentially involve trading of HAPs) must provide an ongoing public input and review process to evaluate whether the programs yield an equitable distribution of impacts on HAP emissions.

USEPA continues to believe that Illinois is taking appropriate steps to assure an informed, public debate of the impacts of its trading program on emissions of hazardous air pollutants. USEPA did not claim that all parties agree on all details of a rule on emissions reporting; USEPA instead more accurately observed that a workgroup convened by the state had ''achieved general consensus on a draft rule,'' in particular a general consensus ''to require companies to report emissions of individual HAP species.'' Subsequent to USEPA's notice of proposed rulemaking, Illinois has now published and distributed its first annual report on the program. Contrary to CBE/ALAMC's concerns about lack of discussion of methods for analyzing whether disparate impacts had occurred, Illinois extensively solicited input from the business and environmental members of its workgroup on such methods and other aspects of this report.

USEPA acknowledges that business representatives and environmental groups can have differing definitions of environmental justice and disparate impacts. Given the variety of possible scenarios, it is reasonable for Illinois to focus on analyzing actual data and to avoid extensive preliminary debate on methods for analyzing an array of hypothetical scenarios, most of which would not actually occur.

As sought by Johnson, Illinois has committed to an ongoing process for reviewing the program's impact on hazardous air pollutant emissions and to remedy any problems that are identified. USEPA does not share Johnson's view that USEPA should require the state to adopt specific provisions mandating mitigation of any environmental justice problems that arise. USEPA further disagrees with Johnson's statement that Illinois provides no opportunity for such mitigation.

USEPA reviewed Illinois' program according to guidance on three elements of programs well designed to address environmental justice concerns. The key first element is a program design that

makes environmental justice problems unlikely. Illinois does so by requiring program participants to continue to comply with all RACT and hazardous air pollutant regulations and establishing an overall emission reduction requirement, which discourages the otherwise likely local emission increases. The second element is an ongoing public information and review process. This process should identify whether problems are arising that can be addressed with simple permit revisions, whether problems are arising that would require rule revisions, or whether as expected no significant problems are arising. It is important here to note that the range of potential issues is wide, and so it is unrealistic to expect the state to adopt a rule that provides for program revisions to address any possible desired remedy. The third element is the state's commitment to remedy any problems that are identified. By incorporating these elements into its program, USEPA believes that Illinois has taken appropriate steps to address concerns about environmental justice.

2. Comments on ''Open Market Trading Features''

Comment: ED comments extensively on the ''elements of an 'open market' system'' incorporated in Illinois'' program. Because Illinois allows generation of trading credits from small industrial, mobile, and area sources, ED views Illinois' program as a hybrid and not a true cap and trade program. ED believes that this incorporation of open market features into Illinois' program should prompt USEPA to reconsider whether Illinois' program will achieve the intended emission reductions.

ED compares Illinois' program unfavorably with the acid rain program. ED describes the acid rain program as allowing sources not otherwise subject to the program to voluntarily opt into the program, to receive allowances reflecting a cap on current actual emissions and to be allowed to sell allowances to the extent the sources reduce emissions below their cap. ED describes Subpart E of Illinois' trading rules as providing short-term, ''discrete'' credits. ED concludes that existence of these open market style credits ''fundamentally weakens the integrity of the emissions cap [and] undermines the economic incentives [for] investments in emissions reductions.''

NRDC et al., comment without elaboration that the Illinois program ''incorporates many features of the open market trading rule proposed in 1995 * * *.'' NRDC et al., also claim that Illinois' program ''allows sources to meet (and circumvent) otherwise applicable requirements with [unreliable] pollution credits'' and thus ''will relax existing SIP measures.'' Elsewhere in their comments, NRDC et al., 'cite the ''use of credits from outside the 'capped' sources, from mobile, area and small industrial sources,'' allowing ''inter-sector trading of discrete (i.e., mass-based) credits, in many cases quantified retrospectively.'' NRDC et al., view these features as evidence that ''the Illinois trading program incorporates open market trading mechanisms into its purported limited cap and trade system.''

PEER, in its comments of March 8, 2001, objects at length to open market trading programs in general and to New Jersey's and Michigan's open market trading programs in particular. PEER does not discuss the Illinois program in its comments. Nevertheless, the subject line of this comment letter identifies the Illinois program as one of four programs, ''each of which is based entirely or in substantial part on 'open market trading.' ''

Response: ED implicitly acknowledges that the core features of Illinois' program subject major VOC sources in the Chicago area to a cap and trade program. In addition, ED apparently supports voluntary participation of minor sources in Illinois' program. ED's objections focus more narrowly on the potentially short duration of such sources' participation and the mechanism for accounting for emission reductions from such sources, which ED views as open market features of the Illinois program.

In general, cap and trade programs differ from open market trading programs in several respects: (1) Cap and trade programs require emission reductions beyond those required by RACT regulations and other regulations, whereas open market trading programs characteristically allow emissions above levels such regulations allow (provided another source achieves more than compensating reductions). (2) Cap and trade programs seek to cap the emissions of a category of sources at some level lower than emissions would otherwise be, typically at a level well below prior actual emissions. In contrast, open market programs require net emission reductions as part of each trade but do not foreordain any overall quantity of reductions to be achieved. (3) Cap and trade programs have mandatory participation from a specified category of sources, whereas participation in open market programs is voluntary. (4) Cap and trade programs typically account for all emissions from the participating sources, whereas open market programs typically account only for net emission increases and decreases of participating sources. Typically, cap and trade programs issue a finite number of allowances and limit emissions of each source according to the source's holdings of allowances, whereas open market programs only track whether the emissions decreases of one source suitably compensate for the emissions increases of a matched source.

The Illinois program clearly has these fundamental features of cap and trade programs and lacks the contrasting features of open market trading programs. (1) The Illinois program requires compliance with RACT regulations and all other regulations. (2) The Illinois program sets a cap on emissions which for most sources is 12 percent below baseline actual emissions. Aside from ED's general concerns about program effectiveness, no commenter objected to USEPA's proposed conclusion that the program would reduce Chicago area VOC emissions by 10.9 tons per day. (3) The Illinois program requires participation by major VOC sources in the Chicago ozone nonattainment area. Participation by these sources is not voluntary. (4) The Illinois program accounts for all emissions of the mandated program participants, requiring that these sources limit their emissions to correspond to the number of allowances the source holds out of the finite overall set of allowances.

ED does not dispute that the core features of the Illinois program are those of a cap and trade program; ED instead argues more narrowly that the program is a hybrid in which the cap and trade characteristics are supplemented by open market trading program features. However, USEPA does not agree either that the Illinois program is in any significant respect an open market trading program or that any features of the Illinois program warrant its disapproval.

ED does not object to Illinois' provisions for voluntary participation of small sources on an opt-in basis, which USEPA views as the most significant element of the Illinois program that is characteristic of open market trading programs. Instead, ED favors the opt-in provisions of the acid rain program, a program which ED views as a properly designed cap and trade program.

ED focuses on the duration and accounting of emission reductions by opt-in sources in the acid rain program versus the Illinois program. ED overstates the significance of these distinctions. The acid rain program is set up to include predominantly long

term opt-ins and yet the program does not prohibit relatively short term participation. In theory, the Illinois program is more accommodative of short term participation. In practice, the opt-ins to date have all been permanent. In any case, although the Illinois program has the potential to have a greater fraction of short term participants, it is not clear that even the realization of that potential would significantly change the reliability level of the reductions or otherwise cause the problems ED anticipates.

As for the accounting process, USEPA views the two processes as fundamentally equivalent. Whether a source receives allowances equal to baseline emissions and must retire allowances equal to actual emissions, or alternatively the source receives allowances according to the difference between baseline and actual emissions, both programs result in the source having salable allowances equivalent to the source's emission reductions.

USEPA does have related concerns arising from the issuance of allowance pursuant to emission reductions from small sources, particularly from mobile sources. The emission reductions from mobile sources can be difficult to quantify, insofar as one cannot measure the emissions directly and one must consider the time varying deterioration and usage of the vehicles involved with and without the emission reduction activity.

This issue is not a function of whether crediting for the reductions is done in a characteristically open market trading manner or in a characteristically cap and trade manner, e.g., whether the state issues allowances according to the emission reduction or whether the state issues allowances equal to a cap and allows sale of allowances according to the eliminated emissions. The issue instead pertains to the reliability with which the emission reduction can be determined. Poorly quantified emission reductions result in a program that does not as reliably obtain the intended emission reductions.

To date, Illinois has received no requests for issuance of allowances pursuant to emission reductions by mobile or area sources. USEPA expects this program feature never to involve significant quantities of emissions.

Should such requests arise, USEPA has requested that Illinois consult extensively with USEPA on the methods for evaluating emissions and emission reductions, particularly for requests involving mobile sources. With such consultation, USEPA believes that issuance of allowances for emission reductions from these source types are an acceptable program feature that will not significantly affect the integrity of Illinois' program.

Other commenters provide less justification for suggesting that their concerns about open market trading programs apply to the Illinois program. Contrary to comments by NRDC et al., the Illinois program retains RACT and other such limitations as independently enforceable requirements irrespective of how many allowances a source holds. USEPA continues to believe that the Illinois program is fundamentally a cap and trade program that is unlikely to cause the problems identified by these commenters.

3. Additional Comments by NRDC et al.,

Comment: NRDC et al., make a variety of comments in its introductory remarks. NRDC et al., comment that ''EPA has had some degree of success with the acid rain trading program'', but finds the Illinois program to fall short of the acid rain program in several respects.

Response: USEPA agrees that sulfur dioxide from large boilers is easier to measure and quantify than VOC from various kinds of VOC sources. This causes VOC programs generally to have greater uncertainty that sulfur dioxide programs. However, the Clean Air Act does not direct USEPA to evaluate whether Illinois' trading program is better or worse than the acid rain program. USEPA must instead evaluate whether the Illinois program provides an approvable addition to the Illinois SIP. Further comments and responses below will address the specific features of the Illinois program noted by NRDC et al., treating them as features that NRDC et al., find problematic.

Comment: The Illinois program ''will relax existing SIP measures'' and ''allows sources to meet (and circumvent) otherwise applicable requirements with pollution credits having the integrity of counterfeit currency.''

Response: The Illinois program does not relax any existing SIP measures.

Comment: ''Polluters [are] allowed to develop their own quantification methods without the bother of EPA or public oversight.''

Response: Illinois set the general methods via rulemaking and sets source-specific details of these methods via permit, processes that provide opportunity for public input. USEPA's proposed rulemaking provided a further opportunity for public input on the general methods, though the commenters provided no such input.

Comment: NRDC et al., state that ''We are aware from internal EPA documents * * * that there has been a raging debate within the Agency'' concerning trading program policy, debates which ''apparently began in large part out of vociferous opposition to EPA's deplorable 1995 Open Market Trading (OMT) proposal.''

Response: While NRDC et al., do not specify the internal USEPA documents it examined, the comments do imply that USEPA's proposed rulemaking is the outcome of a thorough internal debate on relevant issues. These comments further imply that many of the issues raised by NRDC et al. are issues that USEPA has already addressed in preparing its proposed rulemaking. In these cases, and in the absence of new input warranting a different conclusion, NRDC et al. should expect USEPA's final rulemaking to reach the same conclusion as USEPA proposed.

Comment: NRDC et al., comment that USEPA appears to be proposing conditional approval, and yet the proposed action lacks key prerequisites for conditional approvals. NRDC concludes that the Clean Air Act provides no basis for the proposed action.

Response: USEPA did not propose conditional approval. USEPA identified some concerns with the State's submittal but anticipated that Illinois would address these concerns. USEPA proposed that if in fact Illinois satisfactorily addressed these concerns, then USEPA would publish full approval pursuant to section 110(k)(3).

Comment: NRDC et al., object to a failure to require that emission reductions be surplus. NRDC et al., observe that the program fails to define surplus. These commenters reference the definition of surplus given in USEPA's regulations on trading programs (40 CFR 51.491 and 51.493), and specifically note the failure to avoid crediting reductions already ''assumed in the relevant emission inventory or [in the Chicago area's] most recent federally approved rate-of-progress or attainment plan.'' The commenters further observe that surplus reductions in fact cannot be identified because ''there has yet to be a submission, let alone a federal approval, of an [attainment] plan including detailed and specific measures.'' The commenter continues by suggesting that USEPA should not approve Illinois' trading program until a detailed attainment plan is in place to specify which emission reductions should be considered surplus and thus creditable for a trading program.

NRDC et al., further comment on the baselines from which Illinois determines each source's target

emissions level (generally 12 percent below baseline level). NRDC et al., object that USEPA's proposal does not describe ''whether or how the baselines are consistent with the inventories included in the approved SIP, rate of progress, or attainment demonstration.''

Response: USEPA's trading program regulations at 40 CFR 51.491 define surplus as ''at a minimum, emission reductions in excess of an established program baseline which are not required by SIP requirements or State regulations, relied upon in any applicable attainment plan or demonstration, or credited in any reasonable further progress or milestone demonstration, so as to prevent the double counting of emission reductions.'' The Illinois program pursues emission reductions relative to a baseline that reflects actual emissions (adjusted if necessary to discount noncompliance) pursuant to ''applicable requirements effective in 1996'' (Cf. Section 205.320). The regulations Illinois submitted do not use the term ''surplus,'' nor do USEPA's regulations require use of the term. Instead, Illinois has indirectly addressed the issue by defining the applicability and the emission reduction obligations of affected sources, and has designed its program to achieve reductions beyond those required by or anticipated from other programs. The notice of proposed rulemaking includes a quantitative evaluation of the emission reductions expected from Illinois' trading program beyond the reductions achieved by other means. That evaluation reflects USEPA's belief that the Illinois trading program in fact achieves reductions that are surplus to the reductions from other elements of the SIP.

USEPA policy is that trading programs may be approved even before a needed attainment demonstration has been approved, so long as the state commits to assure that source emission estimates for the trading program and for the ultimate attainment demonstration are consistent. In this case, Illinois has submitted an attainment demonstration for the Chicago area, which USEPA proposed to approve on July 11, 2001, at 66 FR 36369. The reductions from the trading program are surplus to the other elements of this attainment demonstration. The baselines of the trading program are fundamentally consistent with the attainment demonstration inventory because they are based on the same set of emissions data. The baselines are not identical to the attainment demonstration inventory, particularly due to the adjustments noted by the commenters, but USEPA accounted for the differences in its review of program benefits described at length in the notice of proposed rulemaking.

Comment: NRDC et al., comment extensively on the RECLAIM program in the Los Angeles area. The commenter states that the NO_X RECLAIM program ''has failed spectacularly in recent months.'' The commenter cites a lawsuit filed against a company participating in a Los Angeles area trading program ''because of its redistribution of pollution burdens to low income and minority communities'' near the sources ''using credits rather than making the reductions required of them under the Clean Air Act.'' The commenter observes that the public has raised the same concerns about the Illinois program, and that ''alternatives with a lesser impact are available.''

Response: The commenters have not explained how their views of the RECLAIM program are germane to USEPA's review of the Illinois trading program. USEPA cannot disapprove a program that meets Clean Air Act requirements simply because commenters identify ''lesser impact'' alternatives.

Comment: NRDC et al., state that the Illinois program has no credible enforcement mechanisms. The commenters concede that the program ''is ultimately enforceable under enforcement provisions of the Clean Air Act.'' However, the comment expresses concern that the timetable for such enforceability extends too long and in fact is indeterminate. While noting that USEPA's proposed rulemaking requests that Illinois clarify the timetable, the commenters find it ''unacceptable'' that the proposed rulemaking ''fails to specify how to rectify [this] problem.''

Response: As discussed in more detail in section III above, Illinois has clarified the timetable for enforcement of the requirements of the trading program. In brief, sources that fail to hold the necessary number of allowances as of December 31 and then fail to cover the shortfall plus a surcharge under a timetable that ends about mid-March are subject to enforcement action pursuant to Section 113 of the Clean Air Act. USEPA solicited comments on a similar prospective resolution of this issue.

Comment: NRDC et al., comment that ''[t]he Illinois trading program allows sources to borrow not only from the past, but also from the future,'' and views this as an ''unlawful variance.'' By footnote, the commenters specify that this concern applies particularly to the program feature known as the Alternative Compliance Market Account.

Response: In Illinois' program, most emission reductions will occur every year. Because allowances under the program have a two-year life, in some cases excess reductions in earlier years will allow lesser reductions in later years, consistent with the early reductions policy that USEPA has adopted in several of its rules.

Even with the Alternative Compliance Market Account, ''regular access'' to credits from this special account is for credits associated with the year of purchase (also usable thereafter). Allowance of emissions in one year based on credits from a later year occurs only with ''special access'' to the Alternative Compliance Market Account. Several restrictions assure that ''special access'' will occur rarely if ever. ''Special access'' is prohibited if the source can obtain credits from the marketplace or from ''regular access'' to the Alternative Compliance Market Account. Credits via special access cost twice as much as credits purchased on the market. (''Regular Access'' credits cost 50 percent above market prices.) The number of credits accessible through special access is limited to one percent of the number of credits issued to sources. This feature of the Illinois program is designed as an emergency fund of high-priced credits in case normally priced credits do not materialize.

USEPA generally requires that reductions occur before credit use to avoid concerns about otherwise unallowable emissions occurring and then having expected compensating emission reductions fail to occur. This is unlikely to occur in Illinois, because the prerequisites for special access are unlikely to be met. Even if the prerequisites for special access are met, and under a worst case in which compensating reductions do not occur, the risk is capped at one percent of overall emissions. A further fallback is Illinois' annual program report and Illinois' commitment to address problems identified in the annual report. While the issue identified by the commenter raises the possibility of achieving one percent less emission reduction, USEPA finds that this issue does not raise concerns about the fundamental integrity of the program, and USEPA finds further that the best estimate of the reductions to be achieved by the program do not reflect any adjustment pursuant to this program feature.

Comment: NRDC et al., express concern that provisions for measuring emissions do not satisfy 1994 trading program guidance. The commenters state that the notice of proposed

rulemaking ''misstates the standards of the 1994 Economic Incentive Program guidance, asserting that they simply require 'approaches or a range of approaches' to quantification.'' The commenters state that this guidance instead requires programs to include replicable emission quantification methods, specified in detail in the state's submittal.

Separately, the commenters' introductory comments object that the methods to be used ''are incapable * * * of directly measuring * * * emissions,'' and allow use of ''emission factors that are * * * as likely to be wrong as they are right and that will result in half of sources using them being in noncompliance.''

Response: A full reading of the 1994 guidance requires considering both the parts of 40 CFR 51.493(d) quoted by the commenter and the parts quoted in the notice of proposed rulemaking. The heading of 40 CFR 51.493(d) is ''Replicable emission quantification methods''. Parts of the introductory text under this heading are quoted by the commenters. The introductory text additionally states that the methods ''shall yield results [with] a level of certainty comparable to that for source-specific standards and traditional methods of control strategy development.'' This text is followed by subparagraph (1), entitled ''specification of quantification methods.'' Subparagraph 1 is quoted in part in the notice of proposed rulemaking, including the language quoted above under which the ''specified quantification methods'' may include a combination or a range of methods.

''Traditional'' control programs give varying levels of details of emission quantification methods. Source-specific limitations generally specify a single test method from 40 CFR part 60, appendix A, leaving only relatively modest details unspecified (e.g., types of process materials used during the test). Category-specific rules generally specify a range of methods; for example rules limiting stack emissions of particulate matter would generally specify that any of the methods from 5 or 5A to 5H may be used as appropriate. Even a wider range is specified in rules on new source review, which generally give no particulars on the test method to apply and instead specify that the state is to identify limits (implicitly having an associated test method) in a permit subject to 30-day public review.

The approach in the Illinois trading program is well within this range of approaches. This trading program is limited to one pollutant (VOC) but covers a wide range of VOC sources. Illinois' rules specify methods for each type of source in this range, with more complete details specified in each source's Title V permit. This approach is appropriate for the range of sources in the program and is consistent with the approaches taken with other comparable control programs. The rules submitted by Illinois assure that each source will have a fully replicable emission quantification method subject to appropriate public review. Consequently, USEPA concludes that Illinois' program satisfies the 1994 guidance on emission quantification methods.

Direct measurements of emissions usually provide more reliable data than indirect methods. However, the level of VOC control achieved by Illinois' program would not have been possible if sources needing to use indirect methods had been excluded. All methods give results that can be either too high or too low. In fact, in a trading context, it is preferable to have approximately equal likelihood of obtaining results that are too high versus too low. USEPA is satisfied that the indirect methods that must be used to address sources in Illinois' program are sufficiently reliable to have an acceptable level of confidence that Illinois' program will achieve the anticipated emission reductions.

Comment: NRDC et al., state that ''the Illinois trading program is devoid of any programmatic enforceability'' and therefore should not be creditable for addressing rate of progress requirements.

Response: USEPA is satisfied that the requirements of the Illinois trading program are clear and enforceable. Although the program started too late to be creditable for purposes of the 1997 to 1999 rate of progress plan, the program is creditable for attainment planning purposes.

Comment: NRDC et al., comment that the Illinois trading program interferes with reasonable further progress and attainment obligations. NRDC et al., suggest that Illinois may adopt a trading program to add flexibility to a required control program but may not use the program as a ''substitute * * * for the required control stategy'' needed to satisfy reasonable further progress and attainment requirements. NRDC et al., object that USEPA ''attempts to trivialize this issue as one of 'spiking.' '' NRDC et al., further state that the Illinois program lacks but needs ''safeguards against accumulation and rapid dumping of credits'' (i.e., spiking). Since ''the operations of market mechanisms are anything if not unpredictable,'' NRDC et al., reach ''the conclusion that 'spiking' needs to be addressed affirmatively and proactively.''

Response: The Illinois trading program must be understood as fundamentally being an emission control strategy. The commenters cite nothing in the Clean Air Act or USEPA guidance to suggest that this type of control strategy cannot be used to help achieve the requirements for either reasonable further progress or attainment. The notice of proposed rulemaking evaluates the emission reductions expected from this program, and no commenter commented on this evaluation. USEPA continues to believe that the Illinois trading program is a control strategy that enforceably achieves a reduction estimated at 10.9 tons per day, representing an appropriate element of any reasonable further progress or attainment plan for which these reductions are timely.

In practice, Illinois chose to delay implementing the trading program by one year, so that the reductions were no longer timely for the reasonable further progress plan for reductions by 1999. Illinois submitted substitute measures for this plan, and USEPA approved the revised plan on December 18, 2000 (see 65 FR 78961). The reductions from the trading program are still timely for attaining the standards.

With respect to ''spiking,'' the notice of proposed rulemaking presents economic data indicating that significant swings in emissions are unlikely. The commenters implicitly prefer that the trading program not accommodate significant swings in emissions should the causes of such swings arise. Such swings in emissions are unregulated in absence of a trading program and in fact are inhibited in the presence of Illinois' trading program. The extent of spiking possible under Illinois' program is limited by the two year lifetime of allowances. In addition, the scenario with higher than average later year emissions by definition has equivalently lower than average emissions in earlier years. USEPA continues to believe that it has adequate assurances that no spiking problem will arise in the Chicago area.

Comment: NRDC et al., find that ''section 173(c)(2) disallows the use of 'reductions otherwise required by this Act' for offsets.''

Response: If all sources emit the full amount allowed under the Illinois trading program, no excess allowances would be available to accommodate a new source. That is, if sources achieve no reductions beyond those required by the program (which as part of the attainment demonstration are

considered required by the Act), no offsets would be available. Only if and to the extent that sources achieve reductions that are not otherwise required will allowances representing offsets be available.

Comment: NRDC et al., object to the possibility in the Illinois trading program that credits generated from mobile source emission reductions may be used to offset emissions from major new stationary sources. NRDC et al., state that the ''Clean Air Act, 40 CFR 61.165 and part 51, appendix S make clear that offsets may be obtained only from 'stationary sources' and not 'mobile sources.' '' The commenters observe that this law and these regulations ''make no mention of 'mobile sources' '' as a possible origin of offsets. The commenters quote Clean Air Act section 173(c)(1) and infer that the ''sources'' from which offsets must be obtained must be stationary sources. The commenters justify this inference by noting that some uses of the term ''source'' by necessity mean ''stationary source,'' and by observing that the terms ''source'' and ''stationary source'' are used interchangeably in Part D of Title I of the Act.

Response: USEPA disagrees with the commenters' assertion that offsets under section 173 of the CAA are limited to those from stationary sources. The language of section 173 and the statutory framework and context are best read as allowing offsetting emissions reductions to be provided by sources other than stationary sources. As specified in section 173(a)(1)(A), the ultimate test as to whether offsetting emissions reductions are sufficient is by reference to whether they represent ''reasonable further progress as defined in section 171.'' The definition of ''reasonable further progress'' in section 171(1) plainly refers to the air quality goal of attainment of the NAAQS, and since all sources of air pollution, including mobile, stationary, and ''area'' sources, contribute to nonattainment, the definition of reasonable further progress naturally does not exclude any category of emissions. Accordingly, USEPA has not limited offsets under section 173(a)(1)(A) to those derived from other stationary sources, but has instead allowed other source categories, such as mobile sources, to provide offsets. The statutory language cited by the commenters, referencing ''other sources'' providing offsets, plainly means sources other than the new or modified major stationary source. This language should not be interpreted as requiring offsets to come from that subset of other sources that are stationary.

Comment: NRDC et al., comment that the Illinois trading program violates Clean Air Act section 173 by allowing emission reductions that commence after new source construction to be used as offsets for the new source's emissions. The commenters quote section 173(c)(1) as requiring that emission reductions obtained for offsets ''shall be, by the time a new or modified source commences operation, in effect and enforceable''. Similarly, the commenters quote section 173(a)(1)(A) that, ''by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained''. The commenters further quote the Draft NSR Workshop Manual (October 1993) that ''Offsets should be specifically stated and appear in the permit, regulation or other document which establishes a Federal enforceability requirement for the emissions reduction.''

NRDC et al., object to the rationale given in USEPA's notice of proposed rulemaking for finding Illinois' offsets adequately permanent. The commenters find this rationale inconsistent with section 173 and related USEPA guidance. First, the commenters view USEPA's rationale as tantamount to accepting a promise to obtain offsets in lieu of requiring advance specification of actual offsets. The commenters state that this '' 'restatement' approach is little different from a construction permit merely 'restating' the requirement to meet BACT or LAER upon operation''. The commenters are further concerned that the public get adequate opportunity to review the origins of the offset and to comment on whether the offsets are lawful, quantifiable, surplus, enforceable, and permanent. The commenters further comment that section 173 requires advance securing of offsets, ''in order to prevent any later complaints from the source'' if offsets subsequently cannot be found.

Second, the commenters consider Illinois' approach unreliable. The commenters dissect statements in USEPA's notice of proposed rulemaking to demonstrate that offsets here would lack the necessary permanence. The commenters observe that USEPA's rationale ''brims with the inherent uncertainty, indeterminacy, and unenforceability'' of Illinois' approach. The commenters believe that ''permits with temporary plans that increase the likelihood in practice that sources will offset their pollution increases prior to operation'' fall short of the guarantee of permanent offsets established that the Clean Air Act mandates.

Response: The commenters have properly quoted section 173 but have urged an overly restrictive interpretation of allowable approaches for obtaining offsets. Section 173 does not use the term ''permanent,'' and USEPA does not believe that section 173 requires permanent reliance on a single action or set of actions to offset the new source's emissions in all future years.

USEPA must evaluate what it means to obtain an emission reduction for offset purposes. The commenters believe that obtaining an emission reduction means securing an action (and establishing a mechanism for assuring the permanence of the action) that will yield emission reductions that will offset the new source or major modification emissions starting by the time the new or modified source commences operation and continuing in all future years. The Illinois program aims to address the offset requirement in a slightly different manner, requiring that the needed emission reductions occur each year but allowing different years' reductions to reflect different actions.

Some hypothetical cases help illustrate the key issues here. In the first hypothetical case, new source A obtains its first three years of offsets from source B, its second three years of offsets from source C, and thereafter switches between source B and source C as the origins of its offsets. In this case, the commenters' interpretation of section 173 is violated because there is no single origins of emission reductions that permanently offsets new source A's emissions, and because the emission reductions from source C would perhaps not be in effect when new source A commences operation. However, USEPA believes that this case satisfies section 173. Source A has secured sufficient emission reductions by the time it commences operation. These ''sufficient emission reductions'' occur in each subsequent year as well, such that the combination of new emissions and emission offsets represents reasonable further progress. USEPA interprets section 173(c)(1) to require sufficient emission reductions to commence by the time the new source commences operation, not to require each action yielding emission reductions ever to be used for offset purposes to occur by commencement of source operation.

In a second hypothetical case, new source A receives a permit specifying ofsets for the first 3 years, based on source B suspending operations for 3 years, and requiring that source A obtain equal offsets from unspecified other sources thereafter. Assuming that

the requirement for the subsequent offsets is adequately enforceable, USEPA again would find section 173 satisfied. The permit assures emission reductions offsetting new source A's emissions starting by the time source A commences operation and assures that sufficient offsetting emission reductions will be in effect at all subsequent times as well. USEPA concludes that this scenario would satisfy the section 173 requirements for offsets to be in effect by the time the new source commences construction and to continue to assure reasonable further progress.

Illinois' trading program addresses offsets in a manner similar to this second case. A new source must purchase credits reflecting emission reductions starting upon commencement of operations and at all times thereafter. A new source must identify its plans for offsets for the first three years but need not specify the origins of these offsets for all future years. The Illinois trading program nevertheless establishes an enforceable requirement for new sources to secure offsets at all necessary times.

The approach stated in the proposed rulemaking is consistent with the statements quoted from the document entitled ''Draft NSR Workshop Manual''. In fact, the first hypothetical case above seems consistent with even the commenters' presumed interpretation of the quoted statement, insofar as the permit would specifically state the offsets coming from Source B and the offsets coming from Source C in alternating three year periods. However, USEPA applies a more flexible interpretation of its guidance, wherein the specific statement of offsets can have varying characteristics depending on the nature of the offsets being provided. USEPA expects permits for major new VOC sources in the Chicago area to specifically state that offsets will be obtained via the purchase of surplus credits, and USEPA affirms that the trading regulations that provide for Federal enforceability of the offsets specifically state that surplus credits shall serve as offsets. The flexibility of this USEPA guidance is highlighted by the use of the terms ''should'' and ''must,'' i.e., that the document providing enforceability of the offsets *should* specifically state the offsets, whereas offsets *must* be established in a permit or a SIP revision.

More recent guidance makes even more clear that reductions from trading programs, which are enforceable but which may not have forecastable origins, provide suitable offsets. Specifically, guidance on trading programs, dated January 2001, clarifies at several points that emission reductions obtained pursuant to trading programs may be used for offset purposes, notwithstanding that the sources providing future offsetting reductions may not be known at the time of new source construction. In section 16.14 of this guidance, entitled ''Provisions for new source review and trading'', on page 255, the guidance states that ''You may allow sources to use emission reductions generated by your [trading program] to comply with PSD/NSR requirements [if, among other things,] sources that are required to obtain offsets or netting credits have an obligation to obtain such credits, when they are not continuous credits, for the life of the source needing the credit.'' Similar guidance is provided in Chapter 7, including guidance for open market trading programs that ''If a source wishes to use [credits] to meet its NSR offset requirements it must * * * obtain sufficient [credits] for at least 1 year of operation before receiving its permit [and] commit in its NSR permit to obtain sufficient [credits]'' annually thereafter.

The commenters are concerned about the ''uncertainty, indeterminacy, and unenforceability'' of Illinois' approach. This comment reflects the commenters' concern about the possibility of sources changing the origins of offsets. However, under section 173, the critical issue is whether USEPA can be certain that emissions will be offset at all times. The Illinois trading program provides for offsets at all times, and provides a clear mechanism for enforcing this requirement.

The commenters also express concern at the lack of opportunity for public review and comment on the offsets that a new source would use. Most USEPA policy on this issue reflects cases where a construction permit is used to establish offsets. This case is different, insofar as the public will have already had the opportunity to review the mechanism for obtaining offsets (during the development and then this USEPA review of the trading program), the public will have an additional opportunity to comment on the mechanism when a draft construction permit is issued, but then no convenient forum exists for soliciting public input when a source purchases offsets from different origins. Under these circumstances, USEPA believes that the public has adequate opportunity to comment on the most significant issues pertaining to satisfaction of the offset requirements.

The commenters find Illinois' approach to offsets to be analogous to issuing a construction permit that simply restates a requirement to meet the lowest achievable emission rate (LAER) upon operation. USEPA disagrees with this analogy. First, new source permits in Illinois will specify the precise obligation of the source for offset purposes under the trading program, namely to obtain credits sufficient to offset the new source emissions. Second, the key reason a permit simply restating the LAER requirement is not enforceable, that such a permit does not give the source fair notice as to its precise obligations for emissions control, does not apply to a source mandated to obtain a determinate number of credits for offset purposes.

Comment: NRDC et al., concur with the interpretation described in the notice of proposed rulemaking that ''section 173 requires offsets on a full year basis, rather than the ozone season basis allowed by Illinois.''

Response: USEPA is deferring rulemaking on this issue, pending further review including consideration of this comment and the contrary comment by Illinois EPA. As discussed previously, by not rulemaking on the exemption in section 205.150(e) of Illinois' rules, the standard offset requirements in Part 203 of Illinois' rules remain in effect as part of the Illinois SIP.

4. Additional Comments by ED Dated March 26, 2001

ED submitted comments both on January 26, 2001, and March 26, 2001. The comments of March 26, 2001, include most but not all of the comments of January 26, 2001. ED's comments express numerous concerns about ''open market'' features of Illinois'' program. These comments are addressed above, as are comments by ED concerning environmental justice. The following discussion presents other ED comments of March 26, 2001 and USEPA's responses. The remaining comments submitted January 26, 2001, are addressed in the section that follows.

Comment: ED comments generally that Illinois has begun to develop a program with the potential to deliver significant environmental and health benefits, but that USEPA should withhold approving the program until a number of outstanding issues are remedied.

Response: USEPA responds generally that it believes that the program Illinois submitted is approvable, and USEPA does not believe that ED's concerns warrant withholding approval. Further details of ED's concerns and USEPA's responses follow.

Comment: ED makes several comments expressing concern that the Illinois program gives credits for small source emission reductions beyond how much net area-wide emissions are actually reduced. ED suggests that provisions for credit for small source emission reductions should either be eliminated or reformed into an opt-in approach. ED objects to section 205.500(a)(1) and (a)(3) calculating emission reductions based on allowable emissions rather than on actual emissions. ED recommends that a source emitting above allowable levels not be allowed to generate credits, and objects that a source emitting below its allowable levels may increase production and increase emissions and nevertheless obtain credits for artificial reductions.

Response: These provisions do not in fact give credits beyond the net area-wide emission reductions. Section 205.500(a)(1) allows credits only to the extent installation of control equipment or use of cleaner process inputs yields reductions below allowable levels. Section 205.500(a)(3) allows credit for production curtailments, provided no demand shifting occurs, and according to the decrease in production levels times the allowable emission rate per unit production. Thus, no ATUs are issued for emission controls bringing a source into compliance. Also, the baseline for calculating reductions from production curtailments is not simply maximum allowable emissions but rather is the allowable emission rate at the actual production level. This approach is analogous to the determination of baselines for major sources (Cf. section 205.320(d)), which provides adjustment to the same type of level for sources that installed overcomplying emission controls since 1990. By using a baseline that reflects mandated control levels, subject to the provision that actual emission reductions have resulted from emission controls since 1990, Illinois is operating from the same baseline as is used in attainment and reasonable further progress demonstrations and is rewarding sources that overcomply. In no case does a source with artificial reductions but actual emission increases obtain credits. USEPA views this approach as acceptable.

Comment: With sections 205.500(a)(2), (a)(3), and (a)(4), ED expresses concern that credits may be granted for production curtailments notwithstanding a possibility that the production is shifting to another source that is not accountable for its increased emissions. ED further believes that credits for shutdowns and curtailments should not be granted, since they are not surplus to ''business as usual,'' the credits create ''a perverse incentive to slow business production'', and USEPA's recent trading program guidance states that '' 'shutdowns and activity curtailments cannot generate [discrete emissions reductions]' '' in open market trading programs.

Response: The section of this notice addressing the proposed prerequisites for program approval discusses at length the provisions that assure that ''demand shifting'' will not lead to undue issuance of allowances. In short, Illinois' rules dictate that no ATUs shall be issued when demand shifting may be occurring. USEPA expects most cases to be clear as to whether other sources in the area make a product similar to the product made by the source curtailing production. As reviewed against 1994 guidance, USEPA is satisfied with Illinois' prohibition against demand shifting for stationary sources.

USEPA has committed to reevaluate Illinois' program against the 2001 trading program guidance. USEPA will reconsider the appropriateness of the creditability of small source shutdowns and curtailments during that reevaluation.

Comment: For section 205.500(c), ED believes that Illinois should apply a lower threshold for subjecting credit generation to public notice.

Response: USEPA believes that Illinois has flexibility in choosing a threshold for subjecting credit generation to public notice and believes that the threshold chosen by Illinois is acceptable.

Comment: For section 205.500(d)(3), ED urges clarification that the source has the burden of proof that claimed emission reductions in fact represent a net reduction in Chicago area emissions.

Response: USEPA believes that the information requirements imposed on the applicant establish an adequate inference that the source has the requested burden of proof for showing that the requirements for a net reduction are met.

Comment: ED comments on several specific Illinois rules that affect the coverage and impact of the trading program. ED questions whether sources that grow to 10 tons per ozone season become permanently subject to an ATU holding requirement and receive a permanent ATU allocation. ED objects that sources below 15 tons per ozone season may increase emissions up to that level without securing compensating emission reductions. ED urges that emissions from startup and malfunction be incorporated into the program.

Response: A source that grows above 10 tons per ozone is permanently subject to the requirement to hold adequate ATUs and receives a permanent ATU allocation based on emissions prior to the source growth. This is equivalent to enlarging the program to include the source, and provides an offset for minor source growth that is usually not obtained. Allowing emissions increases below 15 tons per ozone season is effectively the standard practice of not regulating emissions from small sources. Under section 205.225, sources with authorization for higher emissions during startup and malfunction exclude such emissions in determining the ATU holding requirement. Under section 205.320(e)(4), all sources exclude excess emissions from startup and malfunction from baseline emissions. Thus, such emissions from ''authorized sources'' are excluded from the program, and such emissions from sources without the authorization create an obligation to obtain ATUs. While USEPA encouraged Illinois to expand the coverage of its program to include these emissions for all sources, Illinois is under no obligation to do so, and the approach Illinois adopted of requiring ATU accommodation for these emissions for most sources is fully acceptable.

Comment: ED asks whether the delayed determination of baselines for recently constructed sources will significantly affect the impact of the program.

Response: Illinois has adopted a reasonable approach for determining baselines for recently constructed sources, for which it is appropriate to obtain additional information before determining a permanent allocation. There are few such sources, so the impact of this program feature is minimal.

Comment: ED asks whether sources entering the program due to a major modification will be issued ATUs for the pre-modification emissions, thereby increasing the cap.

Response: Sources entering the program are in fact issued ATUs according to pre-modification emissions, and have an obligation to match each 0.1 ton of nonmodification-related emissions with 1 ATU and each 0.1 ton of modification-related emissions with 1.3 ATUs. This enlarges the cap but also enlarges the emissions to be covered by the cap. The net effect of this incorporation of another source into the program is approximately the 0.3 tons of reduction per ton of modification-related emissions. As noted in a response to a comment by NRDC et al., a source that has

undergone a major modification must purchase ATUs from another source or sources that has made ATUs available by emitting less than they would otherwise have been allowed to emit.

Comment: ED observes that the provisions of Rules 205.205 allow some sources that would otherwise be subject to the trading program to be exempt. Similarly, section 205.405 exempts some sources, such as those subject to maximum achievable control technology (MACT) requirements from the requirement for a 12 percent reduction. ED is concerned that these exemptions may cause the program to fail to achieve the 12 percent reduction being sought by the program.

Response: USEPA recognizes that these program elements can affect the emission reductions achieved by the program. In fact, as described in the notice of proposed rulemaking, USEPA's review of the state's assessment of program benefits addressed the effect of these program elements. While the exemption for sources emitting less than 15 tons per ozone season forgoes a modest 12 percent reduction from these sources, the exemption for sources that reduce emissions by 18 percent (with credits equal to six percent going to a credit reserve fund) will likely yield a net reduction greater than 12 percent. The exemption of some sources from a 12 percent reduction requirement will slightly reduce the benefits of the program. USEPA will continue to incorporate these factors in its final assessment of expected emission reductions from the program.

Comment: ED asks whether sources ''need to comply with the most recent NESHAP and MACT levels.''

Response: Yes. Although new such regulations do not affect baselines or other aspects of the trading program, new such regulations, like existing such regulations (and like RACT regulations) are independently enforceable compliance responsibilities of affected sources.

Comment: ED objects to several features of the Alternative Compliance Market Account. ED objects that ATUs stored in this account do not expire. ED objects that under some circumstances a limited number ATUs may be borrowed from the following year's account, potentially having a cumulative effect of shifting ATUs between years indefinitely. ED asks whether the transfer of expired ATUs into the account which occurs under special circumstances offers sources the option to seek cleaner air by requesting that the expired ATUs in fact be retired. ED asks whether section 205.710(g) means that the borrowing of ATUs is limited to 1 percent of the total cap.

Response: In reviewing the state's assessment of program benefits, USEPA assessed benefits as if all ATUs in the Alternative Compliance Market Account are used each year. The more this account has long-lived ATUs, the more the area has benefited from earlier emissions levels below expected levels. Borrowing from the following year will occur rarely, if ever, because the price of such ATUs is twice that of normal ATUs. Furthermore, USEPA interprets section 205.710(e)(1) to provide that such borrowing yields a correspondingly reduced issuance of ATUs in the following year. Although the rules provide no mechanism for sources to request that their expired ATUs be retired, a case in which the account must be populated with expired ATUs would be an extreme circumstance in which there would likely be few expired ATUs. ED is correct in its understanding that the rule language related to cases ''without a positive balance'' in the account means that Illinois is limited to borrowing 1 percent from the following year's allotment of ATUs.

Comment: ED objects to allowing the indefinite borrowing from the future that is inherent in a source with an emissions excursion (i.e., emissions exceeding ATU holdings) providing compensation from its following year ATU issuance.

Response: USEPA expects minimal quantities of emissions to be ''borrowed from the future.'' In fact, USEPA supports requiring sources to provide emission reductions that compensate for prior excess emissions. The source with excess emissions also incurs a penalty of 20 percent of the excess emissions, so that borrowing in such a case is accompanied by a net emission reduction. This surcharge, which increases to 50 percent if excess emissions recur for a second year, also helps assure that emissions excursions cannot recur indefinitely. USEPA believes these provisions are acceptable.

Comment: ED comments generally that the Illinois trading program provides inadequate public information for tracking credit allocations and trades. ED also requests a public registry that records annual as well as seasonal emissions and differentiates those VOC that are hazardous air pollutants.

Response: USEPA agrees that full public access to information on allocations and trades improves the effectiveness of emission trading market systems. USEPA believes that the public database mandated in Rule 205.600 fulfills this purpose. This database is on the Internet at ''*http://www.epa.state.il.us/air/erms/*''. The other more detailed information is not amenable to ongoing tracking on a registry, but much of this information will be provided to the public in Illinois' annual program report, and the public has access to detailed information by requesting it from IEPA.

Comment: Sources that obtain an exemption from the program should nevertheless be required to report seasonal emissions.

Response: Sources that obtain an exemption by reducing emissions by at least 18 percent must report seasonal emissions, as the commenter recommends. Sources that obtain an exemption by becoming limited to 15 tons per ozone season are exempt from seasonal emissions reporting but must demonstrate compliance with permit restrictions that limit seasonal emissions. USEPA believes that these requirements adequately address the commenter's concerns.

Comment: Since sources can use different years for assessing baseline emissions, it is possible that a 12 percent reduction from baseline levels will yield a lesser reduction relative to the total inventory for a single, typical year.

Response: USEPA agrees and has described this issue in its notice of proposed rulemaking. USEPA examined Midwest manufacturing data in an effort to assess the degree to which the sum of source baseline levels can be expected to differ from total emissions for a single, typical year. Since Midwest manufacturing production is fairly stable, USEPA's estimate of emission reductions from Illinois' program reflects a deduction of only 0.7 of the 12 percent targeted reduction pursuant to this factor.

Comment: ED questions provisions in section 205.320(c) that seem to allow a new source to establish an artificially low baseline.

Response: In fact, an artificially low baseline would increase the source's need to purchase credits. These provisions are similar to provisions for existing sources. Even if a source increases its baseline through this provision, this will likely at worst cause only a slight shrinking of the reductions from new sources. Since Illinois took no credit for offsets from new sources, no adjustment to the program benefits estimate is needed.

Comment: For sources with emissions above compliance levels, ED recommends including noncompliance emissions in the trading program, both as a basis for issuing credits (for so long as the established compliance schedule

allows) and as emissions for which credits must be obtained. ED believes this would use the market to encourage faster efforts at compliance.

Response: USEPA supports ED's recommendation. However, USEPA is currently evaluating whether Illinois' program is approvable, not whether enhancements are possible. USEPA concludes that this suggestion is not needed for Illinois' program to be approvable. In any case, USEPA views noncompliance as a transient condition which in most cases is quickly remedied by normal enforcement tools.

Comment: ED objects to USEPA judging Illinois' program against 1994 guidance. ED argues that USEPA should apply the guidance ''finalized and published in January 2001'', which reflects the ''considerable increase in our knowledge with respect to how air emissions trading programs should be designed''.

Response: USEPA periodically updates various kinds of guidance to reflect increases in knowledge. USEPA then faces the question of whether State submittals developed on the basis of the older guidance should be judged against the older or the newer guidance. In cases that do not involve changes in law, USEPA commonly concludes that equity and fairness dictate that USEPA offer to review state submittals based on the guidance that applied when the state submittal was being developed. For these reasons, USEPA is principally judging the Illinois program against the 1994 guidance. This approach is stated in the January 2001 guidance.

USEPA has nevertheless taken steps to address ED's concern. First, as acknowledged by the commenter, USEPA is applying the more recent guidance with respect to the ''environmental justice'' issue. This element of guidance is the most significant change between the old and the new guidance documents. Second, as noted in the notice of proposed rulemaking, USEPA intends to re-evaluate the program according to the new guidance and, if warranted, request that Illinois make appropriate changes. With these safeguards, USEPA finds it appropriate to conduct this rulemaking principally on the basis of the 1994 guidance.

Comment: ED objects to USEPA finding in its proposed rulemaking that the Illinois program has deficiencies but proposing to approve the program if the deficiencies are remedied. ED particularly objects to USEPA approving Illinois' program without offering the public an opportunity to review the modifications that Illinois adopts to address the deficiencies.

Response: Under section 553 the Administrative Procedures Act, USEPA must publish a notice that (for rulemakings such as this) includes ''description of the subjects and issues involved.'' USEPA must then ''give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.'' Finally, USEPA must consider such comments prior to taking final action.

USEPA's obligation, then, is to assure that the public has the opportunity to comment on significant issues inherent in the rulemaking. USEPA recognized this obligation in its notice of proposed rulemaking. That notice states that ''USEPA believes that submittal of [materials addressing the prerequisites for approval] will not raise any new issues not addressed in today's notice. Therefore, USEPA anticipates that submittal of these materials will not necessitate further proposed rulemaking.'' Implicit in those statements is an acknowledgement that USEPA would publish an additional notice of proposed rulemaking if it found that elements of Illinois' supplemental materials or USEPA's intended final rulemaking posed significant issues not identified in the notice of proposed rulemaking.

In this case, USEPA has found that the supplemental material provided by Illinois (and USEPA's final rulemaking) raise no significant new issues. For example, the first item requested by USEPA dictated that Illinois describe the timeline for sources to obtain ATUs, after which enforcement could commence. USEPA identified its understanding of the timeline of the program, and Illinois submitted material clarifying that USEPA's understanding was basically correct. Thus, Illinois' material (and USEPA's rulemaking) pose no significant issues not already raised by the notice of proposed rulemaking. More generally, USEPA has concluded that the material Illinois has submitted on all five prerequisites for approval raise no issues that were not adequately addressed in the notice of proposed rulemaking.

5. Additional Comments by ED Dated January 26, 2001

ED made two additional comments in its January 26, 2001, comments that were not included in its later comments.

Comment: Various types of emissions are exempted from Illinois' program. ''Although this may be well-documented and justified, it still suggests that the cap is being violated.''

Response: Illinois has considerable latitude choosing what types of emissions are to be covered by its program. By exempting certain emissions, Illinois has defined a program in which the cap applies to a slightly more narrow range of emissions. Illinois does not allow violations of this more narrowly defined cap. USEPA considered the effects of these exemptions in assessing emission reductions from the program.

Comment: ''The stated purpose in [section 205.710(a)] should be expanded to include covering for emergency situations and otherwise holding the environment harmless for excursions, etc.'' ED asks the rationale for credits in the Alternative Compliance Market Account having indefinite shelf life whereas normal ATUs have only a two year life.

Response: USEPA believes the purpose need not be stated in the rule. The Alternative Compliance Market Account is an emergency, backup source of high priced credits, which justifies treating these ATUs differently from normal ATUs.

6. Additional Comments by Alex Johnson

Comment: In addition to Alex Johnson's comments on environmental justice issues, he comments that Illinois should have adopted different control measures. Johnson notes that Illinois' own estimates show that ''an adequate AIM rule or cold cleaning degreaser rule would deliver far more reductions in both HAPs and ozone precursors'' than the trading rule. Johnson interprets section 182(e) of the Clean Air Act as expressing Congressional intent that economic incentive programs be used only as a last resort.

Response: The Clean Air Act provides no basis for USEPA to require that Illinois choose the commenter's preferred measures. In areas that fail to achieve milestones of progress toward attainment, section 182(g) identifies economic incentive programs as one of three options required for Serious or Severe ozone nonattainment areas (cf. section 182(g)(3)) and as the only option for extreme areas (cf. Section 182(g)(5). The fact that such programs are required in such circumstances does not signify that States cannot adopt such programs in other circumstances.

7. Additional Comments by Richard Kosobud

Comment: In addition to commenting on the environmental justice issue, Richard Kosobud generally supports the Illinois trading program. He comments that this program provides incentives under which needed emission reductions are achieved by the sources

that can achieve these reductions at lowest cost. He observes that the first year of operation of the program ''already indicates [that trading] saves compliance costs,'' thereby freeing ''resources for other private and public uses,'' and at the same time achieves significant benefits in reducing ozone precursor emissions. Kosobud concludes that USEPA should support this program.

Response: USEPA's experience with the acid rain program, and Illinois' experience to date with its program, indicates that such programs indeed provide strong incentives for companies to reduce emissions, often in ways that USEPA and the State could not otherwise require. For example, some companies in the Chicago area have reduced emissions by changing the nature of their process so as to use less solvent. These reductions can be achieved at far less cost than the industry-wide types of limitations that can be mandated by state regulation. Therefore, USEPA supports Illinois' program.

8. Additional Comment by IEPA

Comment: Illinois objects to statements that USEPA will require the trading program to be revised to conform to the economic incentive program guidance finalized on January 19, 2001. Illinois argues that states cannot provide the regulatory certainty that regulated sources must have if USEPA judges programs according to guidance that becomes available only after the state adopts its rule. Illinois observes that the Clean Air Act does not authorize USEPA to ''require revisions to state rules in the absence of identifying a specific deficiency with the rule.'' Finally, Illinois urges USEPA to defer judgment on the program until the program runs longer, both for USEPA guidance to reflect live experience with state trading programs and to be able to judge the successful and the problematic features of the program.

Response: USEPA recognizes Illinois' concerns about review of its program. Given USEPA's limited experience with trading programs, the operation of Illinois' program and other programs will provide valuable insights that USEPA will use in its further evaluation of the Illinois program. In fact, Illinois' decision to include an annual program review in its rules undoubtedly reflects Illinois' recognition as well that reassessing the features of the program is warranted as we gain more experience with the Illinois program and other programs.

The guidance issued in January 2001 reflects USEPA's current recommendations regarding the various elements of economic incentive programs. If further experience with Illinois' and others' programs leads USEPA to different views, the basis for assessing Illinois' program will change accordingly. For features that differ from current guidance, USEPA will also consider whether the feature differs from guidance available at the time the State adopted its rules. As always, judgments of full programs reflect an overall assessment of the programs, wherein deviations from individual elements of USEPA guidance may be acceptable depending on the significance and the consequences of these deviations.

USEPA intends to coordinate its review of Illinois' program with Illinois' annual review process. If USEPA believes that Illinois' program has inadequacies needing correcting, USEPA would consult with Illinois and the public on the applicable issues before requesting program revisions.

V. What Action Is USEPA Taking?

USEPA is taking final action to approve the Illinois trading program, except that USEPA is deferring action on section 205.150(e), a section which exempts new sources and sources with major modifications from a requirement for full year offsets. USEPA finds that Illinois has satisfied the five prerequisites for approval of its program. USEPA's review of comments lead to a conclusion that Illinois has taken and is taking adequate steps to address hazardous air pollutant impacts of its program, that the program is fundamentally a cap and trade program to which concerns pertaining to open market programs are largely irrelevant, and that various other features of the program are appropriate elements of a fully approvable program. USEPA concludes that these regulations provide enforceable emission reductions that USEPA estimates at 10.9 tons per day in the Chicago ozone nonattainment area.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, USEPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), USEPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, USEPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. USEPA has complied with Executive Order 12630 (53 FR 8859, March 15,

1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 14, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 14, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: September 6, 2001.

David A. Ullrich,

Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(158), to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(158) On December 16, 1997, Bharat Mathur, Chief, Bureau of Air, Illinois Environmental Protection Agency, submitted rules for a cap and trade program regulating volatile organic compound emissions in the Chicago area. By letter dated August 23, 2001, the state requested that USEPA defer rulemaking on section 205.150(e), which exempts new and modified sources obtaining offsets under the trading program from the requirements for traditional, full year offsets.

(i) Incorporation by reference.

Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter b, Part 205, entitled Emissions Reduction Market System, adopted November 20, 1997, effective November 25, 1997, except section 205.150(e).

[FR Doc. 01–25728 Filed 10–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 0135–1135a; FRL–7082–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Missouri. This approval pertains to revisions to a rule which provide reference methods for determining data and information necessary for the enforcement of air pollution control regulations throughout Missouri. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

DATES: This direct final rule will be effective on December 14, 2001 unless EPA receives adverse comments by November 14, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is Being Addressed in This Action?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control