

attainment of the ozone NAAQS by November 15, 2007.

The EPA proposes to: approve the attainment demonstration SIP for the BPA ozone nonattainment area; approve the State's request to extend the ozone attainment date for the BPA ozone nonattainment area to November 15, 2007 while retaining the area's current classification as a moderate ozone nonattainment area; approve the on-road motor vehicle emissions budgets; find that the BPA area meets all remaining outstanding VOC RACT requirements for major sources; and approve the State's enforceable commitment to conduct a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration) and to submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004. If the subsequent analyses conducted by the State as part of the mid-course review indicate additional reductions are needed for BPA to attain the ozone standard, EPA will require the State to implement additional controls as soon as possible until attainment is demonstrated through photochemical grid modeling.

EPA cannot finalize the above proposed actions unless and until the EPA approves all of the following:

1. The NO_x rules for Electric Generating Facilities in East and Central Texas (30 TAC sections 117.131, 117.133, 117.134, 117.135, 117.138, 117.141, 117.143, 117.145, 117.147, 117.149, 117.512);

2. The State-wide NO_x rules for Water Heaters, Small Boilers, and Process Heaters (30 TAC sections 117.460, 117.461, 117.463, 117.465, 117.467, 117.469);

3. The revised emission specifications in the BPA area for Electric Utility Boilers, Industrial, Commercial or Institutional Boilers and certain Process Heaters (30 TAC sections 117.104, 117.106, 117.108, 117.116, 117.206 as they relate to the BPA area, and the repeal of sections 117.109 and 117.601 as they relate to the BPA area);

4. The administrative revisions to the existing Texas NO_x SIP (30 TAC sections 117.101–117.121, 117.201–117.223, 117.510, 117.520, and 117.570);

5. The two Agreed Orders entered into by TNRCC and Alcoa, Inc. and TNRCC and Texas Eastman;

6. Lower RVP Program in East and Central Texas (30 TAC sections 114.1, 114.301, 114.302, and 114.304–114.309);

7. Stage I vapor recovery Program in East and Central Texas (30 TAC sections 115.222–114.229); and,

8. VOC rules as RACT for batch processing (30 TAC sections 115.160–115.169) and wastewater (30 TAC sections 115.140–115.149).

If the EPA cannot fully approve all of the above actions (one through eight), EPA will take final action on the proposed reclassification as described in the April 16, 1999 **Federal Register**. To the extent that comments received on the April 1999 proposed action are applicable to this proposed rulemaking, EPA will respond to those comments in its final rulemaking action.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed 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 proposed 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 proposes to approve 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). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not 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 proposed 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, EPA'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), 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. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: December 18, 2000.

Gregg A. Cooke,

Regional Administrator, Region 6.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL165–1; FRL–6923–3]

Approval and Promulgation of Implementation Plans; Illinois Trading Program

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On December 16, 1997, Illinois submitted rules establishing a “cap and trade” program for volatile organic compound (VOC) emissions in the Chicago area. Illinois issues each major source an allotment of allowances, which it calls allotment trading units or ATUs. For most sources, this allotment corresponds to 12 percent below baseline emissions. Each source must emit no more than the level at which it holds allotment trading units. Trading of allotment trading units is allowed, so that sources that reduce emissions more than 12 percent may sell allotment trading units, and sources that reduce emissions less than 12 percent must buy allotment trading units. In effect, trading increases the allowable emissions of the allowance buying source, equally decreases the allowable emissions of the allowance selling source, and yields no change in total allowable emissions. The net effect is to set a cap reflecting approximately a 12 percent reduction in VOC emissions in the Chicago area.

USEPA proposes to grant final approval of these rules if Illinois resolves certain issues. Specifically, USEPA proposes that Illinois must: Clarify the timeline and penalties for violating sources, satisfy USEPA’s trading program policy on environmental justice, provide for full-year offsets for new sources, commit to discount credits where emission reductions are potentially accompanied by emission increases elsewhere, and commit to remedy any problems identified in its periodic program review.

DATES: Written comments on this proposed rule must arrive on or before January 26, 2001.

ADDRESSES: Send comments to:

J. Elmer Bortzer, Acting Chief, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State’s submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886-6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, summerhays.john@epa.gov, (312) 886-6067.

SUPPLEMENTARY INFORMATION: In this proposed rulemaking, the terms “we,” “us,” and “our” mean USEPA. This document is organized according to the following table of contents:

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- National Technology Transfer and Advancement Act

I. Introduction

On December 16, 1997, Illinois submitted rules for a “cap and trade” program for emissions of volatile organic compounds (VOC¹) in the Chicago area. In this program, sources receive allotments generally equivalent to 12 percent less than their baseline emissions, issued as the appropriate number of allotment trading units or ATUs. Sources must have emissions no higher than the number of ATUs they hold, so a source’s ATU holdings are a “cap” on its emissions. Sources may buy or sell ATUs and thereby increase or decrease their own cap. This “trade” of ATUs gives sources more flexibility in meeting program requirements. Trading is expected to shift emission reductions toward sources that can reduce emissions more cheaply. Trading does not affect the net total emissions allowed under the program, which is approximately 12 percent below net total baseline levels.

USEPA proposes to approve these rules, provided that Illinois addresses certain issues. Specifically, USEPA proposes to approve the rules only if Illinois: (1) Clarifies the applicability of penalties as given in Clean Air Act section 113 for violating sources, (2) satisfies USEPA’s trading program policy on environmental justice, (3) provides for full-year offsets for new sources, (4) commits to discount credits where emission reductions are accompanied by emission increases elsewhere, and (5) commits to remedy any problems identified in its periodic program review.

II. The Features of the Illinois Trading Program

What Is the Purpose of the Program?

The Illinois trading program is designed to reduce VOC emissions and thereby help attain the ozone standard in the Chicago area. The Chicago area is a Severe ozone nonattainment area.

How Does the Illinois Trading Program Work?

The Illinois trading program is a cap and trade program. Each participating source is subject to a cap on its total emissions, but sources may redistribute the allowed emissions by trading allotment trading units. The Illinois Environmental Protection Agency (IEPA) establishes a cap for each

¹ Illinois uses the term “Volatile Organic Material” (VOM) rather than VOC. The State’s definition of VOM is equivalent to USEPA’s definition of VOC. The two terms are interchangeable when discussing volatile organic emissions. For consistency with the Act and USEPA policy, this rulemaking uses the term VOC.

participating source as a function of ozone season emissions during a baseline period (generally 1994 to 1996). In most cases, this cap is set at 12 percent below baseline emissions.

Each year, the State issues allotment trading units or ATUs to each source, reflecting the source's cap level of emissions. Sources are required to hold a number of ATUs that is at least equivalent to their actual ozone season emissions that year. If a source emits more or less emissions than corresponds to its State issuance of ATUs, it must purchase or may sell ATUs, respectively, until the source at a minimum holds the number of ATUs that correspond to the source's emissions for that ozone season.

It is immaterial whether changes in emissions are due to emission controls or production level changes. For example, a source that emits 15 percent less per widget but produces 10 percent more widgets is still required to purchase ATUs.

If no trading were to occur, then each source would have to limit its emissions to its allotment level, which again in most cases is 12 percent below baseline emission levels. Trading of ATUs allows redistribution of emissions from the seller to the buyer of ATUs. For example, if a source was issued ATUs for 50 tons of emissions but emitted 75 tons, the source would have to buy 25 tons worth of ATUs, generally from another source that reduced its emissions to 25 tons below its allotment level. Presumably, sources that can reduce emissions more cheaply will be selling ATUs to sources for whom controls are more expensive. However, this trading does not increase the total emissions that are allowed from the universe of sources in the program. Consequently, total emissions from the sources in the program are subject to a net cap equal to approximately 12 percent below the total baseline emissions.

The rules for the Illinois trading program provide various tools for implementing the program. The rules provide for an electronic data base for tracking ATUs. This data base will include information on the trades of ATUs, the current holdings of each source, and additional information such as recent ATU prices. Thus, after a source reports its ozone season emissions each year, it is then easy to identify whether a source has adequate ATUs to accommodate its emissions for that year's ozone season.

What Sources Are in the Program?

Participation in the trading program is mandatory for essentially all major

sources of VOC in the Chicago area. In this area, "major source" of VOC is defined as a source with the potential to emit 25 tons of VOC per year. The only significant exclusion of major sources from the trading program is for sources that emit disproportionately little during the summer, specifically for sources that emit less than 10 tons during the ozone season. Participation is mandatory for sources throughout the Chicago ozone nonattainment area, including Cook, DuPage, Kane, Lake, McHenry, and Will Counties, as well as townships within Grundy County (Aux Sable and Goose Lake Townships) and Kendall County (Oswego Township).

Additional sources have the option for voluntary participation. Illinois' rules include separate "opt-in" provisions for small industrial sources and for mobile and area sources. Any person who arranges emission reductions from such sources may petition IEPA to receive allotments corresponding to the quantity of the emissions reduction. The direct or indirect sale of these ATUs to a major source will then shift the burden of emission reductions from major to minor sources but will not alter the total emission reductions that must occur.

What Must Sources in This Program Do?

Sources in the Illinois trading program have several obligations. First, the source must evaluate its baseline emissions and submit this information as part of an application for an allotment of ATUs. The application also must identify the emission quantification techniques used to determine baseline and future year emissions and must justify any requests for exemption from the 12 percent reduction that is normally reflected in allotment levels. IEPA uses this information to determine the allotment it will issue to the source and to establish the methods that the source shall use to determine future emissions levels.

Illinois began issuing ATUs in early 2000. (The rules provide for first issuance in 1999, but Illinois has deferred this one year.) Each source is required to apply the identified methods for determining emissions during the ozone season, defined for the trading program as May through September. Now, the most important source obligation has begun, namely to assure that emissions are no higher than the quantity of ATUs held.

How Does Illinois Set Baseline Emission and Allotment Levels?

Baseline emissions generally reflect VOC emissions during the ozone

seasons in 1994, 1995, and 1996. Illinois adjusts these emissions values downward if the emissions exceeded 1996 allowable emissions levels, whether due to noncompliance or because 1996 limitations were not yet in effect. Illinois adjusts these emission values upward if the source reduced emissions after 1990 below the level required as of 1996. In most cases, baseline emissions reflect the average of the higher two of these three ozone season emissions values. However, the option exists for sources to demonstrate that their production levels were unrepresentative for one or more of these years and to substitute a value(s) from a more representative year chosen from 1990 to 1993 or from 1997.

Once Illinois establishes baseline emissions, it can determine the quantity of ATUs to be issued to the source. In most cases, allotments are set at 88 percent of baseline emissions, targeting a 12 percent emission reduction.

An exception applies if the source can demonstrate that an emissions unit is well controlled and should not be targeted for further reductions. This exception is possible if the source is meeting a recently established Lowest Achievable Emission Rate limitation, is meeting a Maximum Achievable Control Technology limitation, or has Best Available Technology. In such cases, allotments for such a unit are set at the well controlled level.

What Elements of This Program Are Implemented Through Title V Permits?

The State uses source operating permits to implement several features of the trading program. As mandated by Title V of the Clean Air Act, Illinois requires operating permits for all major sources, which it calls Clean Air Act Permit Program (CAAPP) permits. These permits must identify all requirements applicable to a source and can be issued only after input from USEPA and the public has been solicited. Illinois' trading rules require participation only from sources that must obtain a CAAPP permit. This permit is used to formally establish the source's baseline emissions, identify any maximally controlled emission units that are exempt from the 12 percent reduction requirement, set the quantity of ATUs to be issued to the source, and specify the methods to be used to measure emissions. To incorporate these items into the CAAPP permit, the State must follow procedural requirements that provide ample opportunity for USEPA and the public to have input into any relevant issues.

What Penalties Apply to Noncomplying Sources?

Sources violating the requirements of the Illinois trading rules are liable for the full penalties authorized in Section 113 of the Clean Air Act. One type of noncompliance is violating requirements for measuring and reporting emissions. A second type of noncompliance is failing to hold ATUs equivalent to the year's ozone season emissions.

Sources must generally secure adequate ATUs by December 31 of each year, that is, within 3 months of the end of each ozone season. A source that holds insufficient ATUs at the end of the year then has a "second chance" to secure ATUs equaling 120 percent (or in some cases 150 percent) of the shortfall. This "second chance" appears to last for 3 additional months, though USEPA is requesting clarification from IEPA on this point. A source that holds insufficient ATUs after this "second chance" is a violating source. This source could be subject to various enforcement actions and would be liable for penalties currently authorized at up to \$27,500 per day for each of the 153 days of the ozone season.

Does This New Program Relax Any Old Requirements?

In general, no. Most importantly, no emission limitations are relaxed by this program. The limitations requiring reasonably available control technology (RACT), for example, remain fully and independently enforceable. That is, a source that exceeded its RACT limits would be liable for enforcement action regardless of the number of ATUs it held.

The one pre-existing requirement that the Illinois trading rules modify is the requirement for offsets for major new sources and major modifications of existing sources. In these cases, the source obtains offsets by obtaining the appropriate number of ATUs rather than by traditional means as part of a construction permit. Since the Chicago area is a severe ozone nonattainment area, sources must obtain 1.3 tons worth of ATUs for each ton of new source emissions. The State issues no ATUs for new sources or for modifications. The ATUs that the source must purchase to accommodate these new emissions are available if and only if some other source has made a corresponding reduction in its emissions. Therefore, the trading program provides offsets that in principle are equivalent to offsets provided by traditional means. However, the use of the trading rules to provide offsets has several ramifications

for the quantity of offsets required and obtained. These ramifications are discussed below in the review of Illinois' program.

III. The Criteria for Reviewing Illinois' Program

What Types of Review Criteria Is USEPA Using?

USEPA must use several types of criteria for evaluating Illinois' trading program. First, USEPA has established numerous criteria as part of published and promulgated guidance on economic incentive programs, including guidance on emission trading programs. Second, USEPA must apply guidance on any other Clean Air Act program that is affected by Illinois' program. Third, insofar as the purpose of Illinois' program is to achieve specified emission reductions, USEPA must evaluate the State's estimate of anticipated reductions.

The guidance most relevant to Illinois' trading program is the guidance on economic incentive programs published on April 7, 1994, promulgated as subpart U of part 51 of title 40 of the Code of Federal Regulations (40 CFR 51), including sections 51.490 to 51.494. Although a portion of that guidance speaks to economic incentive programs that are required in certain circumstances under the Clean Air Act, that portion of the guidance is not relevant here. Instead, the relevant portion of that guidance addresses voluntary programs, with the general purpose of assuring that the net effect of any emissions trading (or actions under any other economic incentive program) does not cause violations of any of various requirements of the Clean Air Act.

More recently, on September 15, 1999, at 64 FR 50086, USEPA published notice of availability of proposed revised guidance on economic incentive programs. This guidance proposes more detailed recommendations for many of the issues addressed in the 1994 guidance and also provides guidance on several types of programs not addressed in the 1994 guidance.

One issue not addressed in the proposed guidance is whether this guidance applies to programs developed before the proposed guidance became available. When USEPA publishes new guidance, USEPA often allows an exemption from that guidance for submittals that the State adopted and submitted prior to the proposal of that guidance. This exemption is known as "grandfathering." This practice allows us to approve programs that the State adopted in good faith according to

guidance available at the time. Since Illinois submitted its program on December 16, 1997, today's rule grandfathered this program from most of the 1999 proposed guidance and instead reviews most aspects of this program against the criteria published in 1994.

Today's rule nevertheless uses one element of the newer proposed guidance in our review of Illinois' program, namely the element that addresses environmental justice and related "toxic hotspot" issues. Environmental justice refers to efforts to assure that areas with high populations of minorities or low-income persons are not unfairly exposed to environmental hazards such as toxic air pollutants. The proposed new guidance identifies specific issues to be addressed to assure that trading programs do not have an inequitable impact on environmental justice areas or other communities of concern. We are applying this portion of the proposed guidance due to the importance of this issue and because relevant guidance was not previously available.

For other issues, USEPA intends to examine Illinois' program in light of the new guidance once the new guidance is finalized. USEPA has discussed these plans with Illinois. Illinois and USEPA share an understanding that we will review the program accordingly and Illinois will reconcile the program to the new guidance within three years after guidance issuance.

A second set of criteria is that the program not result in contravention of any Clean Air Act requirement. As will be discussed below, the Illinois trading program has little effect on other programs, and so only limited guidance on other programs must be considered.

A third set of review criteria is for the quantity of emission reductions that the program is likely to achieve. These criteria reflect standard judgments of emission inventory estimates. This review is expected to be relevant in a future review of whether Illinois has provided sufficient emission reductions to attain the ozone standard.

What Published Guidance Applies to This Type of Trading Program?

Guidance published on April 7, 1994, promulgated at 40 CFR 51 subpart U, gives guidance on numerous features of trading programs. This guidance helps assess whether State programs:

—Assure that credits are quantifiable, surplus, enforceable, and permanent. Quantifiable means that the quantity of emission reductions can be estimated. Surplus for this type of program means that reductions creditable to this program are not already required under

other programs. Enforceable means that the State and USEPA can take action to require compliance with the program requirements and deter noncompliance. Permanent here means that reductions are required as long as the trading rules are part of the State Implementation Plan (SIP).

—Assure that appropriate methods will be used to determine emission quantities. The 1994 guidance requires that the submittal “specify the approach or the combination or range of approaches” that will be used for each source category to quantify emissions, and provides guidance for judging whether these approaches are acceptable.

—Authorize adequate penalties for sources that violate these rules. State programs must authorize enforcement actions and penalties as permissible under section 113 of the Clean Air Act (currently, penalties up to \$27,500 per day per violation) or equivalent penalties based on the size of the violation measured in tons.

USEPA is also evaluating Illinois’ program against criteria in the 1999 proposed guidance for addressing environmental justice issues. USEPA shares the commonly expressed concern about the possibility of trading programs creating localized increases in hazardous air pollutants, both in minority and low-income areas (“environmental justice areas”) and elsewhere. This is a concern with programs that address VOC or particulate matter emissions, insofar as these emissions may have hazardous constituents. Therefore, USEPA’s 1999 proposed guidance identifies four elements of well designed trading programs, including (1) prevention or mitigation of unacceptable impacts, (2) provision of sufficient information for public review, (3) suitable opportunities for public input, and (4) periodic program review to identify and remedy problems.

Does the Program Affect Satisfaction of Other Clean Air Act Requirements?

An important general criterion in reviewing any trading program is whether the program affects other State regulatory provisions such that the State no longer satisfies Clean Air Act requirements. The specific criteria to be used in program review are a function of the particular provisions that the program affects. For example, many trading programs allow relaxations from RACT (counterbalanced by other reductions) or allow alternative reductions to achieve RACT. Such programs must be reviewed based on criteria that address whether the

alternative set of limits continue to satisfy RACT requirements.

As noted in the prior section describing the Illinois trading program, Illinois’ program has no effect on emission limitations that satisfy RACT or other assorted Clean Air Act requirements. As a result, no detailed review of the Illinois program is needed to conclude that these requirements remain satisfied.

The only existing provision in Illinois rules that the trading program affects is the requirement for offsets of emissions from major new sources and major modifications. Sources conventionally obtain offsets as part of a construction permit. Therefore, sources conventionally obtain offsets in advance of construction, based on shutdown or reductions at a specified other source. Under the Illinois trading program, sources obtain offsets in the form of ATUs, which represent emission reductions at the source or sources that no longer hold(s) these ATUs. In effect, the source obtains offsets on an ongoing basis, perhaps from different sources at different times.

The offset requirement is established in Section 173 of the Clean Air Act. Section 173(c) requires that “the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions * * * from the same or other sources in the area.” Section 173(a) requires that these offsets be sufficient to assure “that total allowable emissions from existing sources (plus any new source emissions) will be sufficiently less than (existing emissions) so as to represent * * * reasonable further progress.” Section 182(d) generally requires 1.3 tons of offsets per ton of new emissions. These requirements set the principal criteria for reviewing this aspect of the Illinois program. The program review below discusses these criteria in more detail.

How Does USEPA Judge the Program’s Emissions Reductions?

Illinois’ trading program submittal includes an estimate of the emission reductions that it expects the program to achieve. USEPA must review baseline emissions estimates from Illinois and differences between baseline emissions as defined by the program and average actual emissions. USEPA must also evaluate the impact of assorted program features such as exemptions from the 12 percent reduction, potential use of a special ATU fund, the distribution of ATUs upon source shutdown, and the possibility of ATU creation from reductions by small sources. This

review will also address the possibility of false credits from “demand shifting” (e.g. shutdown of a gasoline station leading to increased gasoline sales elsewhere) and the possibility of “spiking” (i.e. hoarding of ATUs now followed by high emissions in a future year).

IV. USEPA Review of the Features of Illinois’ Program

Does the Program Assure that Emission Reductions are Quantifiable, Surplus, Enforceable, and Permanent?

USEPA’s guidance on trading programs includes four key principles, that emission reductions in these programs be quantifiable, surplus, enforceable, and permanent. This section will review whether the emission reductions in Illinois’ program are surplus and permanent. Subsequent sections will review whether the emission reductions are quantifiable and enforceable.

“Surplus” here means that the emission reductions are beyond the requirements which are already part of the SIP. Illinois’ trading rules use the existing SIP as the baseline from which further reductions are calculated. This approach is used both in setting baseline emissions levels for major sources, from which a 12-percent reduction is calculated, and in assessing the number of ATUs to be issued for emission reductions by minor sources and mobile sources. Thus, the reductions from the Illinois trading program qualify as surplus.

A question about whether the trading program reductions are surplus may arise in the future. If Illinois adopts further regulations, USEPA must evaluate whether the reductions pursued by those regulations would also help meet trading rule requirements. If so, then USEPA would view the trading rule as continuing to achieve the reductions accorded to it in this rulemaking but would view the further regulations as achieving no further reductions. For example, if Illinois adopts a car scrappage program that allows generation of ATUs based on the emission reductions, then USEPA would view this program as redistributing the emission reductions of the trading program without producing further reductions.

“Permanent” is defined in USEPA’s economic incentive program guidance as assuring that the emission reductions will endure as long as the rule applies and as long as the SIP relies on these reductions. This principle is satisfied because the Illinois trading rules and

the emission reductions they require have no termination.

Does the Program Assure that Appropriate Methods Will Be Used to Measure Emissions?

Trading programs must provide appropriate methods for determining the quantity of emissions, in order that trades and compliance evaluations accurately reflect actual emissions. Guidance at 40 CFR 51.493(d) states that programs are to specify the approach or menu of approaches that may be used for each source category in the program.

The Illinois program identifies methods to be used for each type of emission unit. Section 205.330 identifies a range of methods which, "in conjunction with relevant source-specific throughput and operating data, are acceptable methods * * * to determine seasonal emissions". For example, the first method is "material balance calculation, based on the VOM content of raw materials and recovered materials, as is typically used for degreasers, coating lines, and printing lines equipped with a carbon adsorption system (recovery-type control device) or without any control device".

USEPA's 1994 guidance does not address how particular emission quantification methods for particular sources are to be chosen from a range of methods or whether USEPA is to be given the opportunity to review the selection. Nevertheless, the Illinois program provides USEPA and the public an additional opportunity to review the specification of the method to be used for each unit of each source. The Illinois rules dictate that the methods to be used for each source are to be specified in the source's Title V permit. Consequently, USEPA and the public have the opportunities for methods review that are inherent in the Title V process, including a 30-day public review of a draft permit and a 45-day period in which USEPA may veto the permit if it finds the permit objectionable. Thus, the Illinois program satisfies the guidance of 40 CFR 51.493(d) for programs to specify the approach or range of approaches to be used, and provides additional opportunity for USEPA and the public to assure that each source's methods are appropriate.

Although USEPA is not currently reviewing Illinois' program against recent proposed guidance, it is worth noting that the program in fact satisfies this proposal. An option in the proposed guidance is for methods to be specified according to a procedure that offers a 30-day opportunity for public comment and a 45-day opportunity for

USEPA to take steps leading to rejection of the method proposed by the State. Illinois identifies presumptive methods in its rules but uses Title V permits to require specific methods for specific sources. Therefore, Illinois' program satisfies the recent proposed guidance with respect to establishment of emission quantification methods as well as the 1994 guidance on the subject.

Does the Program Authorize Adequate Penalties for Sources that Violate These Rules?

USEPA guidance requires that sources that violate trading program requirements be potentially liable for the penalties authorized in Section 113 of the Clean Air Act or their equivalent. USEPA's guidance further specifies that a violation for an ozone season must be tallied as a violation for each day of the season. The Illinois rules authorize penalties of this magnitude for violators of Illinois trading program requirements.

Applicability of these penalties is straightforward for violations of measuring, recordkeeping, and reporting requirements. Applicability for violation of the ATU holding requirement is more complicated, reflecting the schedule by which this requirement takes effect.

Sources are ordinarily expected to hold ATUs at least equivalent to an ozone season's emissions by December 31 of that year. A source that holds insufficient ATUs then to accommodate its ozone season emissions has a "second chance" to accommodate its emissions. In this "second chance," the source must obtain ATUs equal to the shortfall in its end-of-year ATU holdings plus a surcharge. The surcharge is generally 20 percent of the shortfall, but the surcharge is 50 percent of the shortfall if the source also had a shortfall the previous year. A source must either purchase the necessary ATUs or request to be issued that many fewer ATUs for the next year. A source that fails to compensate for its December 31 shortfall is violating the program requirements and is subject to penalties as authorized in Section 113.

Illinois' rules do not identify an explicit deadline by which sources must obtain compensating ATUs. However, practical considerations imply a de facto deadline. Since the next ozone season begins May 1, the State must issue ATUs by about April 1. This date would thus be a deadline for sources to request a reduction in the number of ATUs issued to them. More generally, if by April 1 a source has neither requested a reduction in their year's ATU issuance nor purchased the necessary ATUs, the source would clearly be violating the

rules and the State could commence enforcement action.

While USEPA views the rules as implying a deadline for compliance, we believe that the State must clarify whether this interpretation is appropriate. Given the importance of having a clear deadline for compliance, USEPA intends to approve these rules only if the State submits clarifications that demonstrate that sources have a deadline for obtaining the necessary ATUs or be in violation and liable for appropriate enforcement action.

Does the Program Adequately Address Environmental Justice Issues?

"Environmental justice" concerns the possibility that low income and minority populated areas are subject to worse environmental conditions and less regulatory mitigation efforts. The question here is what effect the Illinois program might have on air quality in low income and minority populated areas. A related question is whether the Illinois program might lead to worsened air quality in any location. These are not issues for ozone, insofar as ozone air quality is a regional problem that is insensitive to emission distributions. Instead, these issues arise because a subset of the VOC being regulated are hazardous air pollutants (HAPs). As a result, the issues arise from the possibility that a local increase of VOC emissions might occur that might translate to a local increase in HAP concentrations, notwithstanding the general VOC emission reductions that the trading program pursues.

The 1999 proposed guidance on economic incentive programs proposes four key elements to be included in trading programs to assure environmental justice and to avoid problematic increases in localized concentrations of HAPs. These elements are: (1) Provisions that prevent or mitigate potential adverse changes in emissions or emission distribution of HAPs, (2) provisions for sufficient information to be made available for meaningful review and participation, (3) public participation in program design, implementation, and evaluation, and (4) periodic program evaluations.

The proposed guidance notes the typical differences between open market trading programs and cap and trade programs, and recognizes that cap and trade programs often inherently make trades increasing HAPs unlikely. The guidance states:

Cap-and-trade programs * * * typically impose an emissions cap that requires a reduction in overall emissions, and typically require compliance with existing emission rate limitations. Despite the possibility of

emission increases at sources that increase production and do not add emission controls, these program features help assure that a participating source would be unlikely to increase its HAP emissions to unacceptable levels. As a result, cap-and-trade programs in general are less likely to need additional measures to prevent trades that would increase HAP emissions. In most cap-and-trade programs, a retrospective program evaluation is more important for ensuring that the program did not, in fact, create unacceptable localized emission increases.

The Illinois program is in fact a cap and trade program that requires a reduction in overall emissions and requires full compliance with HAPs emissions limits (notably, maximum achievable control technology (MACT) limits) and RACT limits, irrespective of the number of ATUs held. Emissions increases can occur at sources that increase production, but the program allows no emission increases that are not allowed in the absence of the program, and the program does not allow any source to forgo emission reductions that would otherwise be required. Furthermore, Illinois' program reduces the likelihood of emission increases, because a source that increases emissions here faces a cost not imposed elsewhere of purchasing ATUs for the emission increase in addition to the ATUs needed to avoid the normal 12-percent emission reduction. Consequently, the Illinois program is expected to reduce the likelihood of localized increases in HAPs emissions.

The second and third elements of USEPA's proposed policy on HAPs and trading concerns whether sufficient information is available and whether the public has suitable opportunities to provide informed input into the development and implementation of the program. The rules establishing the procedures and criteria of the program were adopted on the basis of a lengthy stakeholder consultation process as well as the normal process for public input for rulemaking. The Title V permit process employed in Illinois' program provides for public input in the establishment of the source-specific elements of the program. Finally, the ATU tracking data base and the annual report provide the public sufficient information and opportunity to offer input on ongoing implementation issues.

The fourth element to be addressed is to provide for periodic program evaluation and opportunity to remedy any problems that are identified following startup of the program. The rules for Illinois' program require an annual program review and report by Illinois. Illinois has convened a workgroup to determine what type of

information to provide in this annual report. The workgroup includes business and environmental group representatives, and USEPA attends its meetings. The workgroup has focused on defining the information that companies must report to support an assessment of the effects of the program on HAPs emissions. The workgroup has achieved general consensus on a draft rule to require companies to report emissions of individual HAP species that are emitted in significant quantities in the Chicago area.

The State has not discussed how its annual report will be distributed or what it will do with the results of the report. In particular, the State has made no commitment to remedy any program deficiencies that are identified. USEPA needs this information before it can reach final judgment on whether Illinois' program satisfies this portion of USEPA's guidance.

As discussed in USEPA's proposed policy, USEPA must evaluate programs as a whole by considering the four above program elements jointly. In formulating this proposed policy, USEPA envisioned that cap and trade programs in many cases would inherently be unlikely to yield localized HAP increases, and that in such cases the mid-course program review would play an enhanced role as a backstop for assuring that the expected protection against localized HAP increases is realized. Therefore, USEPA proposes that if Illinois commits to a wide distribution of its annual review and commits to remedy any problems identified in its annual program review, then the Illinois program would be found to provide adequate assurances against localized HAP increases.

Public commenters on the State rulemaking for these rules noted these issues concerning localized increases in HAP concentrations and focused on an analogous issue, namely that trading might lead to overall increases in emissions of hazardous air pollutants. In essence, these commenters were concerned that trading might yield emission increases for the subset of the VOC components that are hazardous, notwithstanding the mandated reduction of VOC as a whole.

Increases in area-wide emissions of hazardous air pollutants are just as unlikely as increases of VOC or hazardous air pollutant emissions in localized areas, again because most sources' emissions will be decreasing and because an increase in HAPs at any particular source would presumptively involve an improbable shift in the proportion of emissions that are hazardous. Nevertheless, in response to

these concerns, the trading rules provide for IEPA to evaluate the impacts of trades on HAP emissions and report its findings in a periodic program review. This program review is also required to identify any geographic redistributions of emissions occurring under the program, such as redistributions that would cause environmental justice concerns. Given this safeguard, if indeed Illinois commits to remedy any problems identified in its review, and given the minimal likelihood that such problems would arise, the Illinois trading program should have a favorable impact on HAP concentrations area-wide as well as in localized areas.

Does the Program Assure Satisfaction of New Source Requirements?

As noted previously, Illinois' trading rules explicitly provide in general that other State and Federal rules, which implement various Clean Air Act requirements such as RACT, MACT, and lowest achievable emission rate, must be satisfied and are unaffected by the trading rules. The only requirement under other rules that is significantly affected by the rules for the Illinois trading program is the requirement for offsets for new sources. Therefore, the review for consistency with the Clean Air Act needs only to address whether the alternative approach to offsets under these rules satisfies applicable requirements.

As discussed in the program description above, the trading rules provide that new sources and sources undergoing major modifications must purchase ATUs (representing emission reductions elsewhere) equivalent to at least 1.3 times the new emissions. This approach provides offsets that are generally equivalent to the traditional approach. However, a detailed comparison reveals important differences in the two approaches.

Offsets under the trading rule differ from conventional offsets in three key respects: (1) Trading rule offsets need only offset actual emissions, whereas conventional offsets must offset potential emissions; (2) trading rule offsets may be arranged essentially contemporaneously, whereas conventional offsets are arranged prior to issuance of the new source's permit to construct; and (3) trading rule offsets focus on ozone season emissions, whereas conventional offsets address the full year's emissions.

The first issue is whether offsetting of actual rather than potential emissions satisfies the basic requirement in Section 173, as quoted above, to assure that the sum of the emissions allowed

from existing sources plus the new source is suitably reduced. Ordinarily, this assurance is provided by requiring reductions in existing source emissions that more than compensate for the full allowable quantity of new emissions from the new source. The trading program uses a different approach. The trading program directly regulates the sum of actual emissions from all major existing and new sources. The number of ATUs issued is effectively a cap on overall actual emissions from major sources in the Chicago area. No additional ATUs are issued to new or modified sources. Consequently, when a new source obtains the required 1.3 tons worth of ATUs per ton of new emissions, then the source or sources selling the ATUs have necessarily achieved 1.3 tons of emission reductions to offset each ton of the new source's emissions. That is, the Illinois program requires a net reduction of 0.3 tons per ton of new emissions in the total allowable emissions from existing plus new sources in the Chicago area. Thus, despite the focus on actual rather than potential emissions, the Illinois trading program nevertheless satisfies the relevant net reduction requirement.

Another perspective on this issue is to view the use of actual versus potential emissions as a reflection of how the offsets are administered. For conventional offsets, there is one opportunity to establish offsetting emission reductions, during issuance of the construction permit before the source is constructed. In those circumstances, the permit must provide sufficient offsets to offset as much new emissions as the new source will ever emit, *i.e.*, the new source's potential emissions. In contrast, the trading rule provides opportunities recurring on an annual basis to reassess the quantity of emissions to be offset. The trading rule relies on this annual reassessment to assure that the new source obtains enough offsets each year to offset its emissions adequately.

A second difference between offsets under the trading program and conventional offsets is the timing by which the offsets are arranged. Section 173 requires that "sufficient offsetting emission reductions have been obtained" "by the time the source is to commence construction." (The clauses in Section 173 are reversed here.) Ordinarily, the construction permit identifies the offsets. In Illinois' trading program, the construction permit restates the requirement to hold ATUs sufficient to offset (at a 1.3 to 1 ratio) the emissions attributable to the major new source or major modification. USEPA views this as satisfying the requirement

to provide assurances prior to construction that the new emissions will be suitably offset. Illinois further requires new sources to identify how they plan to obtain offsets for the first three years of operation, which increases the likelihood in practice that new sources will make permanent arrangements for offsets similar to the unavoidably permanent arrangements for conventional offsets.

The third difference from conventional offsets is the seasonality of offsets under the Illinois trading program. Offsets under the trading rule are achieved by obtaining ATUs. These ATUs represent ozone season emissions, and must be obtained in proportion to ozone season emissions of the new source or major modification. This differs from the conventional focus on increases and decreases of annual emissions. In most cases the two approaches will have about the same effect, because the off-season new emissions will typically have about the same ratio to on-season new emissions as the off-season to on-season ratio of offsetting emission reductions. For example, if the new source emits 10 tons per month and the offsetting source reduces emissions by 13 tons per month, then there is no practical difference between tallying 50 new tons against 65 tons of reductions for a 5-month ozone season versus tallying 120 new tons versus 156 tons of reductions for the full year. However, seasonal distributions of emissions can vary, so USEPA must assess whether an approach that focuses on ozone season emissions satisfies applicable requirements.

Section 173, as quoted above, requires offsets to reduce "total emissions" sufficiently to achieve reasonable further progress toward attaining the relevant standard. One possible interpretation of this requirement is that one evaluates the total of all emissions that are germane to assessing whether reasonable further progress is occurring, in which case one would take the Illinois approach of focusing on ozone season emissions. However, USEPA views the term "total" in Section 173 to include all emissions from all times of the year, so that one must assess whether emission reductions (occurring in any part of the year) sufficiently offset the full year's new emissions, irrespective of the seasonal definition of reasonable further progress used in other contexts.

In short, the Illinois trading program provides offsets on the basis of ozone season emissions, but USEPA interprets Section 173 to require offsets on a full year basis. USEPA views this feature of

the Illinois trading program as a significant deficiency that Illinois must correct before USEPA can fully approve the program.

The Illinois trading program clearly provides for satisfaction of other new source review requirements. New emissions must be offset permanently. Because the Illinois trading program and its ATU holding requirement are permanent, USEPA views the trading program as mandating permanent offsetting of new emissions. Sources must obtain offsets from the same nonattainment area or from other areas meeting certain criteria. The Illinois trading program operates only within the Chicago nonattainment area, so offsets for new Chicago area sources would derive entirely from other sources in the Chicago area. Other new source requirements, including lowest achievable emission rates, compliance by other sources having the same owner, and criteria for determining the applicability of these requirements, are all unaffected by the Illinois trading program. Therefore, USEPA proposes to find that Illinois will continue to satisfy previously satisfied Clean Air Act requirements if offsets are provided on a full year basis.

Will Illinois Identify and Resolve Program Problems That Arise?

Because trading programs have a variety of designs and because we have little experience with these programs, USEPA guidance calls for trading programs to undertake periodic program evaluations and to remedy any problems that are identified.

Illinois' trading rules require an annual program review. This program review is available to the public. However, IEPA has not described how it will distribute this review and has not committed to pursue remedies if problems are identified. The pursuit of remedies is implicit in the requirement for annual program review. Nevertheless, in accordance with USEPA guidance, Illinois must provide an explicit commitment that it will provide the public suitable opportunity to comment on program implementation and that it will pursue remedies for any problems that the annual program review identifies.

V. USEPA Review of Expected Emission Reduction

How Much Emission Reduction Will Be Achieved?

The Illinois trading rules are clearly designed to achieve an overall reduction approaching 12 percent of the emissions of the major sources in the Chicago area.

Most sources are issued ATUs equal to 12 percent less than their baseline emissions. Trades of these ATUs would shift which source achieves the emission reduction without changing the net total emission reduction achieved.

Features that affect the quantity of reduction to be achieved are: (1) Exemptions from the 12 percent reduction for specified classes of well controlled sources, (2) exemptions from the program for sources that submit to a limitation of 15 tons of emissions per ozone season and for sources that reduce emissions by 18 percent, (3) differences between baseline emissions and average emissions, (4) availability of a reserve account of ATUs equal to one percent of total baseline emissions, and (5) surcharges of ATUs that sources that emit in excess of their ATU holdings must purchase or not be issued. Many of the quantitative influences on the emission reductions to be achieved by this program are difficult to assess. The numbered paragraphs below address the impact of each of these features.

1. USEPA asked Illinois for clarification of the number of ATUs that would be issued to sources that are exempted from the 12 percent reduction in ATUs issued based on being well controlled. By letter of June 18, 1998, Illinois clarified that emission units that are found to be controlled with best available technology by May 1, 1999, for example, are to be issued ATUs reflecting emissions achieved by the best available technology, without adjustments that would otherwise apply. This means that the number of ATUs issued could be more or less than 12 percent below baseline emissions, depending on whether the extra controls achieve less or more than 12 percent emission reductions. As a result, the net effect of this exemption will likely be small.

2. Only a slight loss of emission reduction will likely result from sources opting out of the program via a 15 ton per season limit, and only a slight gain of emission reduction will likely result from sources opting out via an 18 percent reduction. USEPA has no precise estimate of these effects but expects the net effect to be small.

3. USEPA also has no precise estimates of differences between baseline emissions and average emissions. To investigate this issue, we obtained values of an index of midwest industrial production data prepared monthly by the Chicago Federal Reserve Board. We used this index because Chicago area industrial emissions should fluctuate in the same manner as midwest industrial production. We

focused on values for the five months in Illinois' program. "Average" production reflected 1994 to 1996 values for these five months, and "baseline" production reflected the average for the higher two of these 3 years (1995 and 1996).

The index value for "baseline" production was 0.7 percent higher than the index value for "average" production. Consequently, USEPA estimates that baseline emissions under Illinois' program are 0.7 percent above average emissions, and so USEPA is subtracting 0.7 percent in its estimate of emission reductions required by Illinois' program.

USEPA recognizes that the Chicago Federal Reserve Board index, as a composite statistic, does not directly address the difference between average versus higher two of three that would be found by examining data on a source-by-source basis. Nevertheless, USEPA believes that the production index shows qualitatively that the difference is relatively small. Since source-specific data are unavailable, USEPA proposes to use the production index to adjust the estimate of the reductions that Illinois' program will achieve.

4. Illinois issues ATUs equal to 1 percent of baseline emissions to an "Alternative Compliance Market Account." These ATUs are expensive, generally priced at the lesser of \$10,000 per ton or 1.5 times the normal market price of ATUs. The emission reduction required by the Illinois trading program will be reduced to the extent that sources purchase ATUs from this account rather than from other sources. Thus, this feature will subtract between 0 and 1 percent of the reduction that the Illinois trading program requires.

5. When a source has a shortfall in its December 31 ATU holdings relative to its emissions that ozone season, it must provide ATUs equal to 120 percent of its shortfall. This provides a net 20 percent benefit to the environment. However, few sources are expected to have shortfalls, so this effect is likely to be small.

Illinois forecasted the emission reduction from its trading program by examining data in its emissions data base for major sources. This examination identified which sources would likely be subject to the program, preliminarily assessed which emission units at these sources would likely be exempted from the 12-percent reduction requirement (particularly because of implementation of MACT), and evaluated the total emissions which would be subject to a 12-percent reduction. Illinois thereby estimated that its trading program would reduce

VOC emissions in the Chicago area by 12.6 tons per year.

Illinois has developed a reasonable inventory of sources to be subject to the trading program. However, Illinois overlooked two factors which could significantly affect emission reductions to be expected from the program. First, the issuance of ATUs equal to 1 percent of baseline emissions to the Alternative Compliance Market Account means that the program may reduce emissions only to 11 percent instead of 12 percent below baseline emissions. Second, as discussed above, baseline emissions are estimated to be about 0.7 percent higher than average emissions. Thus, 11 percent below baseline emissions would be about 10.4 percent below average emissions.

Consequently, USEPA estimates that Illinois' trading program will reduce emissions by 10.4 percent of the 105 tons per day emitted by sources in the program, or 10.9 tons per day. The actual reduction may be higher, to the extent that the Alternative Compliance Market Account goes unused and to the extent that surcharges are imposed on sources holding insufficient ATUs on December 31. The reduction will likely be higher in the first few years, while sources build up a reserve of ATUs, though this effect is likely to be minimal after a few years. The actual reduction may be lower, to the extent that the above analysis understates the difference between baseline and average emissions and to the extent that sources under 15 tons per ozone season obtain exemptions from the program. The reduction could be either slightly higher or slightly lower, depending on differences between well controlled emission levels and 12 percent below baseline levels. Nevertheless, despite the uncertainties in any estimate of program benefits, USEPA believes that Illinois' trading program will reduce VOC emissions in the Chicago area by about 10.9 tons per day.

The generation of ATUs is complicated in some cases by the difficulty of estimating the quantity of emission reductions. This is especially the case for programs to reduce highway vehicle emissions, for which the reductions are generally a function of a complicated array of variables. For example, the effect of programs for getting old cars off the road is influenced by the age mix of the cars being scrapped and the age mix of the cars being driven instead as well as collateral effects on miles driven, and is variable with time as the foregone mileage of the scrapped cars declines. USEPA anticipates being fully consulted on the quantification of emission

reductions from programs that reduce highway vehicle emissions as a means of generating ATUs. In any case, the uncertainty in these emission estimates is no more likely to yield either greater or lesser reductions, and the net effect is expected to be small.

Can False Credits Arise From "Demand Shifting"?

"Demand shifting" involves redistribution of production from one source to another. Demand shifting is a problem if credits are generated by the reduction in production at the first source and no credits are consumed by the production increase at the second source, since credits for emission reductions would be created where no net emission reduction has occurred. Illinois' program authorizes generation of ATUs via emission reductions at small industrial sources and at other sources including mobile sources and commercial operations.

For small industrial sources, the Illinois trading rules explicitly prohibit issuance of ATUs for small source production declines when that source's production might shift to another small source in the Chicago area. (Production shifts to large sources raise no problems, because large sources are required to hold ATUs to accommodate any increased production.) Therefore, the Illinois rules prevent the "demand shifting" problem for small industrial sources.

For commercial and mobile sources, Illinois' rules do not explicitly address the demand shifting issue. The IEPA is responsible for judging the quantity of emission reductions that a proposed control program will achieve (or has achieved). However, the rule does not require adjusting the emission reduction quantity to account for shifting of the relevant activity to other similar sources, nor has IEPA committed to make such an adjustment.

USEPA believes that Illinois' trading program should be approved only if Illinois commits to adjust any amounts of ATUs issued for commercial or mobile source emission reductions to reflect potential "demand shifting" or otherwise satisfactorily addresses this issue. The need for such a commitment or other resolution of this issue reflects the significant impact that could result from failure to account for the full consequences of proposed control programs for these types of sources.

Can "Spiking" be a Problem?

"Spiking" refers to the possibility that several years of low emissions would be followed by a year of exceptionally high emissions. This is possible in programs

like Illinois' that allow "banking" of credits, wherein credits not used in the low emission years can be reserved for use in a later year to allow high emissions. Illinois' ATUs have a two year life, so a source that for several years emits below its allotment level would increasingly be using year-old ATUs and reserving same-year ATUs, until ultimately in theory the source could hold two years of allotments that it could use in one year. Note that this scenario necessarily involves below average emissions in the year or years preceding the exceptionally high emission year.

Spiking is most problematic when high emissions are more likely to occur during critical air pollution episodes than low emissions. This was possible with USEPA's "NO_x SIP Call", for example, where USEPA was concerned that above average electrical generation and nitrogen oxides (NO_x) emissions might be more likely to occur during high temperature ozone episodes than during supposedly compensating periods of below average activity and emissions. This is not the case for the Illinois program, which addresses principally manufacturing operations that are not influenced by meteorology or other factors affecting air quality. As a result, in Illinois, just as a hypothetical year with much higher than average emissions is preceded by a year or years with correspondingly lower than average emissions, the relative worsening of air quality for the high emissions year compared to average conditions is likely to be the same as the relative improvement of air quality for the preceding low emissions years.

USEPA has proposed guidance for States to "include safeguards * * * to prevent emission spiking commensurate with the probability that spiking will occur." USEPA investigated the probability of spiking occurring in the Illinois program.

Because the Illinois program requires continued achievement of RACT, sources have little latitude to cause spiking by varying control efficiencies. Instead, spiking is only plausible if "spiking" in production levels occurs.

USEPA investigated the likelihood of significant variations in production by analyzing the Chicago Federal Reserve Board's Midwest production index referenced above. The Chicago area has a diverse manufacturing base, so the variability of Midwest production is indicative of the variability of the production of major VOC sources in the Chicago area. The index is available for 1973 to 1998. Again USEPA examined the average index value for the five

ozone season months. Of the 25 comparisons of consecutive year index averages, the index never changed by as much as 20 percent, dropped between 12 and about 18 percent in 3 years, increased by about 16 percent in 1 year, and stayed within about 10 percent for the remaining 21 years.

USEPA concludes that spiking is unlikely to occur in the Illinois program. Nevertheless, USEPA expects Illinois to report in its annual program review whether a significant stockpile of ATUs is being banked and if so to take corrective action as appropriate.

VI. Today's Action

What Action Is USEPA Proposing To Take?

USEPA proposes to approve the Illinois trading program if Illinois provides five commitments or program revisions identified in this notice. Today's notice solicits comments on these proposed prerequisites for program approval as well as on other issues raised by Illinois' submittal and USEPA's review. USEPA believes that submittal of these materials 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.

What Further Commitments and Program Revisions Is USEPA Proposing To Require From Illinois?

USEPA proposes to approve Illinois' trading program only if Illinois submits five items:

1. Illinois must describe the timeline for sources to obtain the necessary number of ATUs. This description must identify a deadline after which Section 113 enforcement actions may be pursued.

2. Illinois must satisfy USEPA's policy on environmental justice as described in the proposed trading program guidance announced on September 15, 1999, at 64 FR 50086. This requires 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.

3. Illinois must modify its new source requirements to provide offsets (at a 1.3 to 1 ratio, optionally from off-season emission reductions) for potential off-season VOC emissions of any major new source or major modification, to supplement the offsets that the trading program provides for on-season emissions.

4. Illinois must commit to discount or prohibit issuance of ATUs for commercial or mobile source emission reductions when the reduction is attributable to an activity level decrease that may accompany an increase in the level of that activity elsewhere in the Chicago area ("demand shifting").

5. Illinois must commit to address any problems that are identified in its annual program review.

VII. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that USEPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13084

Under Executive Order 13084, USEPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or USEPA consults with those governments. If USEPA complies by consulting, Executive Order 13084 requires USEPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of USEPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the

regulation. In addition, Executive Order 13084 requires USEPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires USEPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, USEPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or USEPA consults with State and local officials early in the process of developing the proposed regulation. USEPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not 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, because it merely proposes to approve 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

USEPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action

proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, USEPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The USEPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting recordkeeping requirements, Volatile organic compounds.

Dated: December 15, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00-32945 Filed 12-26-00; 8:45 am]

BILLING CODE 6560-50-U

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1602

Privacy Act of 1974; Implementation

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Proposed rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board proposes to adopt regulations for handling requests made under the Privacy Act. The Privacy Act requires Federal agencies to create regulations establishing procedures for its implementation. These regulations will ensure the proper handling and preservation of agency records subject to the Privacy Act.

DATES: Submit comments on or before January 26, 2001.

ADDRESSES: Address all comments concerning this proposed rule to Christopher Kirkpatrick, Chemical Safety and Hazard Investigation Board,

2175 K Street, NW., Suite 400, Washington, DC 20037-1809.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkpatrick, 202-261-7619.

SUPPLEMENTARY INFORMATION: These proposed regulations implement the Privacy Act of 1974, 5 U.S.C. 552a. The Board proposes the following set of regulations to discharge its responsibilities under the Privacy Act. The Privacy Act establishes: basic procedures for individuals' access to all records in systems of records maintained by the Chemical Safety and Hazard Investigation Board ("CSB" or "Board") that are retrieved by an individual's name or personal identifier. These proposed rules describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the CSB. The Board invites comments from interested groups and members of the public on these proposed regulations.

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this proposed regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Board did not deem any action necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48.

List of Subjects in 40 CFR Part 1602

Administrative practice and procedure, Privacy.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to add a new 40 CFR Part 1602 to read as follows:

PART 1602—PROTECTION OF PRIVACY AND ACCESS TO INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

Sec.

1602.1 General provisions.

1602.2 Requests for access to records.

1602.3 Responsibility for responding to requests for access to records.

1602.4 Responses to requests for access to records.

1602.5 Appeals from denials of requests for access to records.

1602.6 Requests for amendment or correction of records.

1602.7 Requests for accountings of record disclosures.

1602.8 Preservation of records.

1602.9 Fees.

1602.10 Notice of court-ordered and emergency disclosures.

Authority: 5 U.S.C. 552a, 553; 42 U.S.C. 7412 *et seq.*

§ 1602.1 General provisions.

(a) *Purpose and scope.* This part contains the rules that the Chemical Safety and Hazard Investigation Board ("CSB" or "Board") follows under the Privacy Act of 1974, 5 U.S.C. 552a. These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The rules in this part apply to all records in systems of records maintained by the CSB that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the CSB. In addition, the CSB processes all Privacy Act requests for access to records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, following the rules contained in part 1601 of this chapter, which gives requests the benefit of both statutes.

(b) *Definitions.* As used in this part:

Requester means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

Request for access to a record means a request made as described in subsection (d)(1) of the Privacy Act, 5 U.S.C. 552a.

Request for amendment or correction of a record means a request made as described in subsection (d)(2) of the Privacy Act, 5 U.S.C. 552a.

Request for an accounting means a request made as described in subsection (c)(3) of the Privacy Act, 5 U.S.C. 552a.

§ 1602.2 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a CSB record about yourself by appearing in person or by writing to the CSB. Your request should be sent or delivered to the CSB's General Counsel, at 2175 K Street, NW, 4th Floor, Washington, DC 20037. For the quickest possible handling, you should mark both your request letter and the envelope "Privacy Act Request."