

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: ALTERNATIVE REDUCTION PROGRAM

PART 205
EMISSIONS REDUCTION MARKET SYSTEM

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

SOURCE: Adopted at 21 Ill. Reg. 15777, effective November 27, 1997.

SUBPART A: GENERAL PROVISIONS

Section 205.100 Severability

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

Section 205.110 Purpose

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

- a) Implement innovative and cost-effective strategies to attain the national ambient air quality standard (NAAQS) for ozone and to meet the requirements of the Clean Air Act;
- b) Increase flexibility for participating sources and lessen the economic impacts associated with implementation of the Clean Air Act;
- c) Take into account the findings of the national ozone transport assessment coordinated by the Environmental Council of States with participation by the United States Environmental Protection Agency and by the Lake Michigan Air Directors Consortium; and
- d) Assure that sources subject to the ERMS regulatory program will not be required to reduce emissions to an extent that exceeds their proportionate share of the total emissions reductions required of all emission sources, including mobile and area sources.

Section 205.120 Abbreviation and Acronyms

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

ACMA	Alternative Compliance Market Account
Act	Environmental Protection Act [415 ILCS 5]
ATU	Allotment Trading Unit
BAT	Best Available Technology
CAA	Clean Air Act as amended in 1990 [42 U.S.C. 7401 through 7671q]
CAAPP	Clean Air Act Permit Program
ERMS	Emissions Reduction Market System
LAER	Lowest Achievable Emission Rate
MACT	Maximum Achievable Control Technology
NAAQS	National Ambient Air Quality Standard
NESHAP	National Emission Standards for Hazardous Air Pollutants
RFP	Reasonable Further Progress
ROP	Rate of Progress
USEPA	United States Environmental Protection Agency
VOM	Volatile Organic Material

Section 205.130 Definitions

Unless otherwise specified within this Part, the definitions for the terms used in this Part shall be the same as those found in Section 39.5 of the Act [415 ILCS 5/39.5] and in 35 Ill. Adm. Code 211.

“Account officer” means a natural person who has been approved by the Agency, as specified in Section 205.620 of this Part, and is subsequently responsible for one or more Transaction Accounts to which he or she is designated.

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

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

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

“Baseline emissions” means a participating source's VOM emissions for the seasonal allotment period based on historical operations as determined under Subpart C of this Part. Baseline emissions shall be the basis of the allotment for each participating source.

“Best Available Technology (BAT)” means an emission level based on the maximum degree of reduction of VOM emitted from or which results from any emission unit, which the Agency, on a case-by-case basis, taking into account energy, environmental and economic impacts, determines is achievable for such unit through application of production processes and available methods, systems, and techniques for control of VOM, considering the features and production process and control methods, systems and techniques already used for the unit. BAT for an emission unit shall not be more stringent than Best Available Control Technology (BACT) as would be determined contemporaneously for such unit under the federal rules for Prevention of Significant Deterioration of Air Quality (PSD), 40 CFR 52.21 (1996). In no event shall application of “best available technology” result in emissions of VOM which exceed the emissions allowed by any standard established pursuant to Section 111 of the Clean Air Act, if such a standard is applicable to the category of emission unit.

“CAAPP” means the Clean Air Act Permit Program, pursuant to Section 39.5 of the Act [415 ILCS 5/39.5].

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

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

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

“Excursion Compensation Notice” means an administrative notice issued by the Agency, pursuant to Section 205.720 of this Part, that notifies the owner or operator of a participating source or new participating source that the Agency has determined that the source has had an emissions excursion.

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

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

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

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

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

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

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

“Special participant” means any person that registers with the Agency and may purchase and retire ATUs but not sell ATUs, as specified in Section 205.610 of this Part.

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

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

Section 205.150 Emissions Management Periods

- a) The VOM emissions control period is the seasonal allotment period, which is from May 1 through September 30, annually.
- b) The reconciliation period is from October 1 to December 31, annually. During each reconciliation period, participating sources and new participating sources shall:
 - 1) Compile data of actual VOM emissions during the immediately preceding seasonal allotment period; and
 - 2) Submit its seasonal emissions component of its Annual Emissions Report, in accordance with Section 205.300 of this Part.
- c) At the end of each reconciliation period, on and after the dates specified in Section 205.200 of this Part, each participating source shall:
 - 1) Hold ATUs in an amount not less than its VOM emissions during the preceding seasonal allotment period, except as provided in Sections 205.220, 205.225, 205.315, 205.320(e)(3) or (f) and 205.750 of this Part; or
 - 2) Hold ATUs in an amount not less than 1.3 times its seasonal emissions attributable to a major modification during the preceding seasonal allotment period, if a participating source commences operation of a major modification pursuant to 35 Ill. Adm. Code 203 on or after May 1, 1999. Additionally, such source must hold ATUs in accordance with subsection (c)(1) of this Section for VOM emissions not attributable to this major modification during the preceding seasonal allotment period.
- d) At the end of each reconciliation period, on and after the date on which the source commences operation, as specified in Section 205.210 of this Part, each new participating source shall:

- 1) If the new participating source is a new major source pursuant to 35 Ill. Adm. Code 203, hold ATUs in an amount not less than 1.3 times its VOM emissions during the preceding seasonal allotment period; or
 - 2) If the new participating source is not a new major source pursuant to 35 Ill. Adm. Code 203, hold ATUs in an amount not less than its VOM emissions during the preceding seasonal allotment period, except as provided in Sections 205.220, 205.225 and 205.750 of this Part.
- e) Any participating source that commences operation of a major modification on or after May 1, 1999, or any new participating source that is a new major source, which, at the end of each reconciliation period, holds ATUs in an amount not less than 1.3 times the VOM emissions during the preceding seasonal allotment period, in accordance with subsection (c)(2) or (d)(1) of this Section, as applicable, shall be deemed to have satisfied the offset requirements of 35 Ill. Adm. Code 203.302(a), 203.602 and 203.701.

SUBPART B: APPLICABILITY

Section 205.200 Participating Source

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

- a) For any participating source that has baseline emissions of at least 10 tons of VOM, as determined in accordance with Section 205.320(a) of this Part, beginning with the 1999 seasonal allotment period;
- b) For any source that first becomes a participating source because its VOM emissions increase to 10 tons per season or more in any seasonal allotment period beginning with 1999 and this emissions increase is not a major modification pursuant to 35 Ill. Adm. Code 203, beginning with the first seasonal allotment period after such increased emissions occurred; or
- c) For any source that will first be subject to the requirements of this Part because of a VOM emissions increase at any time on or after May 1, 1999 that constitutes a major modification pursuant to 35 Ill. Adm. Code 203, upon commencing operation of this modification.

Section 205.205 Exempt Source

- a) Any source that otherwise meets the criteria for participating sources shall be exempt from the requirements of this Part if the source accepts a 15 tons per seasonal allotment period limit on its VOM emissions in its CAAPP permit for each seasonal allotment period in which the source would be required to participate in the ERMS in accordance with the following:
 - 1) If the source would be required to participate in the ERMS beginning with the 1999 seasonal allotment period in accordance with Section 205.200(a) of this Subpart, such source shall apply for the applicable permit limitation by March 1, 1998; or
 - 2) If the source is required to participate in the ERMS in any seasonal allotment period after 1999 because its VOM emissions increase to 10 tons or more in any seasonal allotment period beginning with 1999 in accordance with Section 205.200(b) of this Subpart, such source shall apply for the applicable permit limitation by December 1 of the first year in which its seasonal emissions are at least 10 tons.

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

Section 205.210 New Participating Source

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

Section 205.220 Insignificant Emission Units

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

Section 205.225 Startup, Malfunction or Breakdown

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

SUBPART C: OPERATIONAL IMPLEMENTATION

Section 205.300 Seasonal Emissions Component of the Annual Emissions Report

- a) For each year in which the source is operational, the owner or operator of each participating source and new participating source shall submit, as a component of its Annual Emissions Report, seasonal emissions information to the Agency for each seasonal allotment period after the effective date of this Part in accordance with the following schedule:
 - 1) For each participating source or new participating source that generates VOM emissions from less than 10 emission units, by October 31 of each year; and
 - 2) For each participating source or new participating source that generates VOM emissions from 10 or more emission units, by November 30 of each year.

- b) In addition to any information required pursuant to 35 Ill. Adm. Code 254, the seasonal emissions component of the Annual Emissions Report shall contain the following information for the preceding seasonal allotment period for each emission unit emitting or capable of emitting VOM, except that such information is not required for emission units excluded pursuant to Section 205.220 of this Part or for VOM emissions attributable to startup, malfunction or breakdown, as specified in Section 205.225 of this Part:
 - 1) Actual seasonal emissions of VOM from the source;
 - 2) A description of the methods and practices used to determine VOM emissions, as required by the source's CAAPP permit, including any supporting documentation and calculations;

- 3) A detailed description of any monitoring methods that differ from the methods specified in the CAAPP permit for the source, as provided in Section 205.337 of this Subpart;
- 4) If a source has experienced an emergency, as provided in Section 205.750 of this Part, it shall reference the associated emergency conditions report that has been approved by the Agency;
- 5) If a source's baseline emissions have been adjusted because of a variance, consent order or CAAPP permit compliance schedule, as provided for in Section 205.320(e)(3) of this Subpart, it shall provide documentation quantifying the adjusted VOM emissions amount; and
- 6) If a source is operating a new or modified emission unit for which three years of operational data is not yet available, as specified in Section 205.320(f) of this Subpart, it shall specify seasonal emissions attributable to the new emission unit or the modification of the emission unit.

Section 205.310 ERMS Applications

- a) The owner or operator of each participating source or new participating source shall submit to the Agency an ERMS application in accordance with the following schedule:
 - 1) For a participating source with baseline emissions of at least 10 tons of VOM, as determined in accordance with Section 205.320(a) of this Subpart, by March 1, 1998;
 - 2) For any source that first becomes a participating source because its VOM emissions increase to 10 tons or greater during any seasonal allotment period beginning with 1999, on or before December 1 of the year of the first seasonal allotment period in which its VOM emissions are at least 10 tons, provided that this emissions increase is not a major modification pursuant to 35 Ill. Adm. Code 203; or
 - 3) For a new participating source or for a major modification of any source existing prior to May 1, 1999, that is subject to 35 Ill. Adm. Code 203 based on VOM emissions, at the time a construction permit application is submitted or due for the source or modification, whichever occurs first.
- b) Except as provided in subsection (d) of this Section, each ERMS application for participating sources shall contain all information required by the Agency pursuant to Section 39.5 of the Act [415 ILCS 5/39.5] or

reference such information if previously submitted to the Agency, including the following information:

- 1) Data sufficient to establish the appropriate baseline emissions for the source in accordance with Section 205.320 of this Subpart, including but not limited to the following:
 - A) VOM emissions data and production types and levels from the baseline emissions year(s), as specified in Section 205.320(a)(1), (b) or (c) of this Subpart, as appropriate;
 - B) If the source is proposing a substitute baseline emissions year(s), as provided in Section 205.320(a)(2) of this Subpart, a justification that the year is more representative than 1994, 1995 or 1996, including data on production types and levels from the proposed substitute year(s) and historical production data, as needed to justify that the proposed substitute year(s) is representative; and
 - C) If the source is proposing a baseline emissions adjustment based on voluntary over-compliance, as provided in Section 205.320(d) of this Subpart, sufficient information for the Agency to determine the appropriate adjustment;
 - 2) A description of methods and practices used to determine baseline emissions and that will be used to determine seasonal emissions for purposes of demonstrating compliance with this Part, in accordance with Sections 205.330 and 205.335 of this Subpart;
 - 3) Identification of any emission unit for which exclusion from further reductions is sought pursuant to Section 205.405(b) of this Part and including all of the information required pursuant to Section 205.405(b) of this Part;
 - 4) Identification of any emission unit excluded from further reductions pursuant to Section 205.405(a) of this Part; and
 - 5) Identification of any new or modified emission unit for which a construction permit was issued prior to January 1, 1998, but for which three years of operational data is not available, and the permitted VOM emissions or the permitted increase in VOM emissions from such emission unit(s), adjusted for the seasonal allotment period.
- c) Except as provided in subsection (h) of this Section, the ERMS application submitted by each participating source shall also be an

application for a significant modification of its CAAPP permit or a revision to its CAAPP application if a CAAPP permit has not yet been issued for the source.

- d) The ERMS application for any source that elects to reduce its seasonal emissions by at least 18 percent from its baseline emissions, as provided in Section 205.205(b) of this Part, shall include:
 - 1) VOM emissions data sufficient to establish the appropriate baseline emissions for the source in accordance with Section 205.320 of this Subpart; and
 - 2) A description of methods and practices used to determine baseline emissions and that will be used to demonstrate that its seasonal emissions will be at least 18 percent less than its baseline emissions, in accordance with Sections 205.330 and 205.335 of this Subpart.
- e) Within 120 days after receipt of an ERMS application, the Agency shall provide written notification to the source of a preliminary baseline emissions determination. Public notice of a draft CAAPP permit in accordance with Section 39.5(8) of the Act [415 ILCS 5/39.5(8)] shall fulfill this requirement for a preliminary baseline emissions determination if issued within 120 days.
- f) The ERMS application for each source applying for a major modification, as provided in subsection (a)(3) of this Section, shall include the information specified in subsection (b) of this Section and a certification by the owner or operator recognizing that the source will be required to hold ATUs by the end of each reconciliation period in accordance with Section 205.150(c)(2) of this Part, and provide a plan explaining the means by which it will obtain ATUs for the VOM emissions attributable to the major modification for the first three seasonal allotment periods in which this major modification is operational.
- g) The ERMS application for each new participating source shall include:
 - 1) A description of methods and practices that will be used to determine seasonal emissions for purposes of demonstrating compliance with this Part, in accordance with Sections 205.330 and 205.335 of this Subpart;
 - 2) A certification by the owner or operator recognizing that the source will be required to hold ATUs by the end of each reconciliation period in accordance with Section 205.150(d) of this

Part for each seasonal allotment period in which it is operational;
and

- 3) If the source is a new major source subject to 35 Ill. Adm. Code 203, a plan explaining means by which it will obtain such ATUs for the first three seasonal allotment periods in which it is operational.
- h) The owner or operator of any participating source that has identified a new or modified emission unit, as specified in subsection (b)(5) of this Section, shall submit a written request for, or an application for, a revised emissions baseline and allotment. Such written request or application shall be submitted by December 1 of the year of the third complete seasonal allotment period in which such newly constructed emission unit is operational, which submittal shall include information on the seasonal emissions for these first three seasonal allotment periods.

Section 205.315 CAAPP Permits for ERMS Sources

- a) The Agency shall determine the baseline emissions for each participating source in accordance with Section 205.320 of this Subpart, through its final permit action on a new or modified CAAPP permit for each such source. The Agency's baseline emissions determination may be appealed in accordance with the CAAPP appeal procedures specified in Section 40.2 of the Act [415 ILCS 5/40.2]. If the permit conditions establishing a source's baseline emissions are appealed, the baseline emissions for the source shall be as proposed in the source's ERMS application during the pendency of the appeal. During the pendency of the appeal, ATUs shall be allotted to the source pursuant to the part of the source's proposed baseline emissions that is not disputed in the appeal. If such source's seasonal VOM emissions exceed the ATUs it holds at the end of reconciliation periods during the pendency of the appeal, the source will not be deemed to have had an emissions excursion to the extent that such seasonal VOM emissions do not exceed the amount it proposed as its baseline in its ERMS application, less reductions required pursuant to Section 205.400(c) or (e) of this Part, if applicable. Such source shall not be allowed to sell ATUs during the pendency of the appeal._
- b) The Agency shall determine, in accordance with Sections 205.330 and 205.335 of this Subpart, the methods and practices applicable to each participating source and new participating source to determine seasonal emissions through its final permit action on a new or modified CAAPP permit for each such source. The Agency's determination of the methods and practices applicable may be appealed in accordance with the CAAPP appeal procedures specified in Section 40.2 of the Act [415 ILCS 5/40.2].

- c) The Agency shall determine, in accordance with Section 205.405(b) of this Part, if an emission unit qualifies for exclusion from further reductions in its final permit action on a new or modified CAAPP permit for each such source. The Agency's determination may be appealed in accordance with the CAAPP appeal procedures specified in Section 40.2 of the Act [415 ILCS 5/40.2]. If the permit conditions establishing the Agency's BAT determination are appealed, ATUs shall be allotted to the source for any emission unit for which the Agency's BAT determination is being appealed with the emissions reduction required by Section 205.400(c) or (e) of this Part during the pendency of the appeal. If the seasonal VOM emissions for the subject emission unit(s) exceed the ATUs that are attributed to the unit(s) during the pendency of the appeal, the source will not be deemed to have an emissions excursion to the extent that such seasonal VOM emissions do not exceed the amount of ATUs that would be attributed to this unit if the BAT exclusion was accepted. Such source shall not be allowed to sell ATUs during the pendency of the appeal._
- d) The allotment for each participating source for each seasonal allotment period shall be specified in its CAAPP permit.
- e) To the extent possible, the Agency shall initiate the procedures of 35 Ill. Adm. Code 252, as required by Section 39.5 of the Act [415 ILCS 5/39.5], by grouping the draft CAAPP permits and supporting documents for participating sources. Specifically, to the extent possible, the Agency shall issue a joint public notice and hold a joint hearing, as appropriate, addressing participating sources for which a hearing is requested.
- f) When a CAAPP permit for a participating source is transferred from the current permittee to another person:
 - 1) In the case of a name change of the participating source where ownership is not altered, appropriate documentation shall be submitted to revise the Transaction Account to reflect the name change; or
 - 2) In the case of an ownership change of the participating source, the allotment shall also be transferred by the owner or operator of the permitted source to the new owner or operator, or the new owner or operator shall submit a statement to the Agency certifying that such transfer is not occurring and demonstrating that necessary ATUs are or will be available by other means for the intended operation of the source.
- g) Upon reopening or renewal of the CAAPP permit for any participating source or new participating source, any multiple season transfer

agreement, as provided in Section 205.630(a)(2)(B) of this Part, that has three or more years of transfers remaining shall be identified in the renewed or reissued CAAPP permit for each such source.

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

Section 205.318 Certification for Exempt CAAPP Sources

The owner or operator of any source that is located in the Chicago ozone nonattainment area that is required to obtain a CAAPP permit, and has seasonal emissions, as determined in accordance with Section 205.320(a) of this Subpart, of less than 10 tons shall submit a written certification to the Agency by March 1, 1998, certifying that its VOM emissions are below 10 tons per season as specified in Section 205.320(a) of this Subpart. Such certification shall include the amount of VOM emissions at the source during the 1994, 1995, 1996 and 1997 seasonal allotment periods, and supporting calculations.

Section 205.320 Baseline Emissions

- a) Except as provided in subsection (b) or (c) of this Section, baseline emissions shall be determined by the Agency in accordance with the following, adjusted as specified in subsections (d), (e) and (f) of this Section:
 - 1) Baseline emissions shall be calculated using the average of the two seasonal allotment periods with the highest VOM emissions during 1994, 1995 or 1996.
 - 2) Any source may propose to substitute seasonal emissions on a year-for-year basis due to non-representative conditions in 1994, 1995 or 1996, but must stay within the period from 1990 through 1997, and must have accurate seasonal emissions data for the substitute year(s). When considering whether to substitute a seasonal baseline emission year(s), the Agency must consider the information submitted by the source pursuant to Section 205.310(b)(1)(B) of this Subpart, as well as the accuracy of that data. For the purposes of this subsection (a)(2), “non-representative conditions” include, but are not limited to, events such as strikes, fires, floods and market conditions.
- b) For any source that has seasonal emissions of less than 10 tons, as determined in accordance with subsection (a) of this Section, but becomes a participating source because its seasonal emissions increase to 10 tons or

more in any seasonal allotment period beginning with 1999, baseline emissions shall be determined by the Agency based on actual VOM emissions from the first seasonal allotment period in which the sources emissions equaled or exceeded 10 tons, adjusted as specified in subsections (d), (e) and (f) of this Section, provided such emissions increase is not a major modification pursuant to 35 Ill. Adm. Code 203.

- c) For any source that has seasonal emissions of less than 10 tons, as determined in accordance with subsection (a) of this Section, but becomes a participating source because its seasonal emissions increase to 10 tons or more in any seasonal allotment period beginning with 1999 and this emissions increase constitutes a major modification pursuant to 35 Ill. Adm. Code 203, baseline emissions shall be determined by the Agency based on the average of the actual seasonal emissions from the two seasonal periods prior to a timely submittal of its application for the major modification, adjusted as specified in subsections (d) and (e) of this Section. Any such source may substitute seasonal emissions on a year-for-year basis due to non-representative conditions in either of the two seasonal allotment periods prior to submittal of its application for the major modification but must stay within the five year period prior to submittal of such application. For the purposes of this subsection, “non-representative conditions” include, but are not limited to, conditions such as strikes, fires, floods and market conditions.

- d) The baseline emissions of any participating source shall be increased for voluntary over-compliance that occurred after October 31, 1990 and results in a VOM emissions level that is lower than the level required by applicable requirements effective in 1996, including limitations in the source’s permit(s) based on such applicable requirements. Voluntary over-compliance shall be determined in accordance with the following:
 - 1) Determine the actual activity or production types and levels from the seasonal allotment period(s) selected for baseline emissions pursuant to subsection (a), (b) or (c) of this Section;
 - 2) Determine seasonal emissions for each emission unit as the product of the amount of activity or production, as determined in accordance with subsection (d)(1) of this Section, and the actual emissions level;
 - 3) Determine seasonal emissions for each emission unit as the product of the amount of activity or production, as determined in accordance with subsection (d)(1) of this Section, and the allowable emissions level pursuant to all applicable requirements effective through 1996, including limitations in the source’s permit(s) based on such applicable requirements; and

- 4) Determine the appropriate adjustment to baseline emissions by subtracting the seasonal emissions determined pursuant to subsection (d)(2) of this Section from the seasonal emissions determined pursuant to subsection (d)(3) of this Section.
- e) The baseline emissions of any participating source shall be decreased if any of the following circumstances exist:
- 1) If a source is out of compliance with any applicable requirements, including limitations in the source's permit(s) based on such applicable requirements, in any of the seasonal allotment periods used for baseline emissions, its baseline emissions shall be lowered to reflect the amount of VOM emissions that would be achieved if in compliance with such requirements.
 - 2) If any of the seasonal allotment periods selected for baseline emissions do not reflect compliance with requirements effective through 1996 that became applicable after any of the years selected as baseline years, the source's baseline emissions shall be lowered to reflect the amount of VOM emissions that would be achieved if in compliance with such requirements.
 - 3) If, in any of the years selected for baseline emissions, a source's VOM emissions are in excess of the amount of VOM emissions allowed by applicable rules because it has been granted a variance, has entered into a consent order, or is operating pursuant to a CAAPP permit compliance schedule, the baseline emissions for such source shall be lowered to reflect the VOM emissions amount that would be achieved if in compliance with such requirements, subject to the following:
 - A) Each such source shall be allowed to emit VOM emissions in excess of the ATUs it holds at the end of the reconciliation period each year until compliance with the applicable regulation is achieved, or upon expiration of the relief allowed for in the variance, consent order or CAAPP permit compliance schedule, whichever occurs first;
 - B) Such excess VOM emissions shall be allowed to the extent allowed in the variance, consent order or CAAPP permit compliance schedule; and
 - C) The seasonal component of the Annual Emissions Report for each such source shall be adjusted each year until compliance with the applicable requirement(s) is achieved,

or upon expiration of the relief allowed for in the variance, consent order or CAAPP permit compliance schedule, whichever occurs first, as specified in subsection (e)(3)(B) of this Section.

- 4) For any participating source that operated with excess emissions during startup, malfunction or breakdown during any year used to determine its baseline emissions, whether or not such operation was authorized pursuant to the source's permit, excess VOM emissions attributable to startup, malfunction or breakdown shall be excluded from the baseline emissions.
- f) For new or modified emission units at a source for which a construction permit was issued prior to January 1, 1998, but for which three years of operational data is not available, the baseline emissions determination for the source shall include VOM emissions from such new emission unit or the increase in emissions from the modification of such emission unit based on the two seasonal allotment periods with the highest VOM emissions from the first three complete seasonal allotment periods in which any such new or modified emission unit is operational. ATUs shall only be issued in accordance with this subsection after the baseline emissions has been determined. Any such source shall not be required to hold ATUs for VOM emissions attributable to the new emission unit or the modification of the existing emission unit for the first three complete seasonal allotment periods in which it is operational.
- g) For any source which acquired emission reduction credits pursuant to a written agreement, entered into prior to January 1, 1998, and such emission reduction credits were acquired for use as emissions offsets, in accordance with 35 Ill. Adm. Code 203, such emission reduction credits, adjusted for the seasonal allotment period, and reduced by 24 percent, shall be included in the baseline emissions determination for the source, only to the extent that:
 - 1) The Agency has issued a federally enforceable permit, prior to January 1, 1998, to the source from which the emission reduction credits were acquired, and such federally enforceable permit recognized the creation of the VOM emission reduction credits by the cessation of all VOM-emitting activities and the withdrawal of the operating permits for VOM-emitting activities at such other sources; and
 - 2) The Agency has not relied upon the emission reduction credits to demonstrate attainment or reasonable further progress.

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

- a) Material balance calculation, based on the VOM content of raw materials and recovered materials, as is typically used for degreasers, coating lines, and printing lines equipped with a carbon adsorption system (recovery-type control device) or without any control device;
- b) A standard engineering formula for estimation of emissions, as is typically used for storage and transfer of volatile organic liquids;
- c) A source-specific emission factor(s), based on representative testing and sampling data and appropriate analysis, as typically used for petroleum refining processes;
- d) A published USEPA emission factor(s), as is typically used for component leaks;
- e) A source-specific emission rate or VOM control efficiency, based on representative testing, as is typically used for chemical processes and afterburners (destruction-type control device), respectively;
- f) A method not listed above that is sufficient to demonstrate compliance with this Section; or
- g) An appropriate combination of the above methods, as typically used for a coating or printing line equipped with a control device, where the available emissions are determined by material balance and the control efficiency is determined by representative testing.

Section 205.335 Sampling, Testing, Monitoring and Recordkeeping Practices

The owner or operator of a participating source or new participating source shall conduct sampling, perform testing, conduct monitoring and maintain records as needed to support its method for determining seasonal emissions in accordance with Section 205.330 of this Subpart and to demonstrate compliance with this Part. Such sampling, testing, monitoring and recordkeeping shall be, at a minimum, as stringent as that required by any

applicable requirement and any permit condition. The Agency shall establish the practices applicable to each such source in the source's CAAPP permit.

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

- a) The methods used for determining seasonal emissions from a source shall generally be consistent with the methods used to determine its baseline emissions unless the source's permit accommodates the use of alternate methods to determine VOM emissions.
- b) Modification of Methods and Practices
 - 1) If a source proposes new or revised methods to determine VOM emissions or new or revised supporting practices for sampling, testing, monitoring or recordkeeping that differ significantly from the methods and practices specified by its current permit, the source shall obtain a revised permit in accordance with the procedures specified in Section 39.5 of the Act [415 ILCS 5/39.5], prior to relying on such methods and practices.
 - 2) The Agency shall issue a revised permit if it finds, based upon submission of an appropriate permit application, that the proposed methods or practices are needed or appropriate to address changes in the operation of the source or emission units that were not considered when the current permit was issued, that the proposed methods and procedures will not significantly affect the determination of actual seasonal emissions, or that the proposed methods and procedures incorporate new or improved analytical techniques or estimation methods that will increase the accuracy with which actual seasonal emissions are determined, and other applicable requirements for issuance of a revised permit are met.
 - 3) If the Agency approves the use of a modified method or practice, the Agency is authorized to determine a corrected baseline and thereafter issue ATUs in accordance with Section 205.400(c) of this Part pursuant to this corrected baseline.

SUBPART D: SEASONAL EMISSIONS MANAGEMENT

Section 205.400 Seasonal Emissions Allotment

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

- b) Except for ATUs issued pursuant to Sections 205.500 and 205.510 of this Part, ATUs issued for any seasonal allotment period are valid for use during the seasonal allotment period following issuance and the next succeeding seasonal allotment period. All ATUs shall be valid until such ATUs expire or are retired.
- c) The initial allotment for each participating source shall be based on the baseline emissions for such source, as determined in accordance with Section 205.320 of this Part, and shall be reduced by 12 percent in 1999 or in such other year that a source is issued its initial allotment, except as provided in Section 205.405 of this Subpart.
- d) Except as provided in Section 205.337(b)(3) of this Part and subsections (c) and (e) of this Section, allotments shall remain at 1999 or initial levels unless the Agency makes a demonstration to the Board, in accordance with the rulemaking provisions of Sections 9.8, 27 and 28 of the Act [415 ILCS 5/9.8, 27 and 28], that further reductions are needed. An allotment or a baseline under this Part does not constitute a property right. Nothing in this Part shall be construed to limit the authority of the Board to terminate or limit such allotment or baseline pursuant to its rulemaking authority under Sections 9.8, 27 and 28 of the Act [415 ILCS 5/9.8, 27 and 28].
- e) If the baseline emissions for any participating source are increased in accordance with Section 205.320(f) of this Part, the allotment shall be increased by the modified portion of the baseline emissions amount, reduced by 12 percent, except as provided in Section 205.405 of this Subpart.
- f) Except as provided in subsection (h) of this Section, any new participating source shall not be issued ATUs by the Agency, but shall be required to hold ATUs at the end of the reconciliation period as specified in Section 205.150(d) of this Part for each seasonal allotment period in which it is operational.
- g) Any source existing as of May 1, 1999, which first becomes subject to the requirements of this Part because its seasonal emissions increase to 10 tons or more as a result of a major modification pursuant to 35 Ill. Adm. Code 203, in any seasonal allotment period beginning with 1999, shall not be allotted ATUs by the Agency for the VOM emissions attributable to this modification, except as provided in subsection (h) of this Section, but shall be allotted ATUs by the Agency based on its baseline emissions, as determined in accordance with Section 205.320 of this Part. Any such participating source shall be required to hold ATUs at the end of the reconciliation period as specified in Section 205.150(c) of this Part, for each seasonal allotment period in which it is subject to this Part.

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

Section 205.405 Exclusions from Further Reductions

- a) VOM emissions from the following emission units, if satisfying subsection (a)(1), (a)(2) or (a)(3) of this Section prior to May 1, 1999, shall be excluded from the VOM emissions reductions requirements specified in Section 205.400(c) and (e) of this Subpart as long as such emission units continue to satisfy subsection (a)(1), (a)(2) or (a)(3) of this Section:
 - 1) Emission units that comply with any NESHAP or MACT standard promulgated pursuant to the CAA;
 - 2) Direct combustion emission units designed and used for comfort heating purposes, fuel combustion emission units and internal combustion engines; and
 - 3) An emission unit for which a LAER demonstration has been approved by the Agency on or after November 15, 1990.
- b) When it is determined that an emission unit is using, prior to May 1, 1999, BAT for controlling VOM emissions, VOM emissions from such emission unit shall not be subject to the VOM emissions reductions requirement specified in Section 205.400(c) or (e) of this Subpart as long as such emission unit continues to use such BAT. The owner or operator of a source may request such exclusion from further reductions by providing the following information, in addition to the information required in Section 205.310 of this Part, in its ERMS application:
 - 1) Identification of each emission unit for which exclusion is requested, including the year of initial operation of such emission unit;
 - 2) Identification of all requirements applicable to the emission unit;

- 3) A demonstration that the emission unit is using BAT for controlling VOM emissions;
 - 4) Identification of the permitted VOM emissions from the emission unit;
 - 5) VOM emissions from the emission unit for each seasonal allotment period used in the baseline emissions determination for the source; and
 - 6) A description and quantification of any reductions in VOM emissions that were achieved at the emission unit or source based on its use of BAT.
- c) As part of its review of an ERMS application or application for a modified allotment, the Agency may determine that any such emission unit qualifies for exclusion from further reductions under subsection (a) or (b) of this Section. The Agency shall make its proposed determination in a draft CAAPP permit subject to public notice and participation, accompanied by an explanation of its proposed action.

Section 205.410 Participating Source Shutdowns

- a) If a participating source shuts down all operations at the source, and withdraws its permit or its permit is revoked or terminates, allotments issued to such a source for each seasonal allotment period after the shutdown occurred shall be subject to the following:
 - 1) 80 percent of all such ATUs shall continue to be allotted to the owner or operator of such source or its duly authorized recipient; and
 - 2) 20 percent of all such ATUs shall be issued to the ACMA.
- b) Except as provided in subsection (c) of this Section, the owner or operator of any participating source that shuts down all operations, in accordance with subsection (a) of this Section, shall submit a written request to have its status changed to a general participant, upon withdrawal, revocation or termination of its permit.
- c) The owner or operator of any participating source that shuts down all operations, in accordance with subsection (a) of this Section, may authorize the issuance of future ATUs to the Transaction Account of another participating source, new participating source or general participant by submitting a transfer agreement authorizing a permanent transfer of all future ATUs. The CAAPP permit of any participating

source or new participating source designated to receive future allotments of ATUs pursuant to such a transfer agreement shall be modified to reflect this transfer upon reopening or renewal. Any ATUs issued pursuant to a transfer agreement entered into under this subsection before shut down of all operations of the participating source shall not be subject to subsection (a) of this Section.

SUBPART E: ALTERNATIVE ATU GENERATION

Section 205.500 Emissions Reduction Generator

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

- a) ATUs will only be issued pursuant to this Section if based on actual VOM emissions reductions that meet one or more of the following:
 - 1) If, based on the same actual production rate, VOM emissions at the source for any seasonal allotment period beginning in 1999 are or will be lower due to the use of technology or materials at the source than if operating at the same production rate at the emissions level allowed by applicable requirements effective in 1996 or any requirements included in the State Implementation Plan, provided such reductions occurred after 1990;
 - 2) The source shuts down a portion or all of its operation(s) after 1996 and withdraws the relevant operating permit(s), provided the VOM emissions from the shut down activity or activities will not be distributed elsewhere within the Chicago ozone nonattainment area;
 - 3) The source(s) curtails its seasonal production activity resulting in an actual reduction in VOM emissions during any seasonal allotment period beginning in 1999, provided the VOM emissions from the curtailment will not be distributed elsewhere within the Chicago nonattainment area. Such emissions reduction shall be based on the difference between the average production level for the two seasonal allotment periods prior to the year of curtailment

and the curtailed production level, calculated at the VOM emission rate allowed by applicable requirements effective in 1996; or

- 4) The source shuts down operations or curtails seasonal production activity as described in subsections (a)(2) and (a)(3) of this Section, respectively, and the VOM emissions from the shut down activity or activities or curtailment will be distributed to a participating or new participating source or sources within the Chicago ozone nonattainment area, and the proposal provides that all ATUs issued pursuant to this Section on account of such shut down or curtailment are to be issued to the corresponding participating or new participating source or sources.
- b) If any proposal is based on a shut down of operations, as specified in subsection (a)(2) of this Section, that results in seasonal emissions reductions of 10 tons or more, 20 percent of ATUs issued based on such an emissions reduction generator proposal shall be allocated to the ACMA.
- c) Any proposal based on seasonal emissions reductions of 10 tons or more and the Agency's approval thereof shall be subject to the public notice requirements of Section 39.5 of the Act [415 ILCS 5/39.5].
- d) Any proposal submitted shall include the following:
 - 1) Information identifying the source(s) from which the VOM emissions reductions has been or will be achieved and its owner or operator;
 - 2) An explanation of the method used to achieve the VOM emissions reductions;
 - 3) Relevant information describing the nature of the underlying activity that generated the VOM emissions and the relationship of the units at which the VOM emissions reduction occurred to other units or sources performing the same or related activity in the Chicago ozone nonattainment area, if the VOM emissions reduction is attributable to a partial or complete source shutdown or a production curtailment, as specified in subsection (a)(2), (a)(3) or (a)(4) of this Section;
 - 4) The amount of VOM emissions for the two seasonal allotment periods prior to the year(s) of curtailment, including supporting calculations, if the VOM emissions reduction is attributable to a production curtailment as specified in subsection (a)(3) or (a)(4) of this Section;

- 5) The amount of the VOM emissions reduction, including supporting calculations and documentation, such as material usage information;
 - 6) The name and address of the participating source(s), new participating source(s) or general participant(s) to which ATUs will be issued, including the name and telephone number of the account officer for such source or participant; and
 - 7) The owner or operator of each proposed emission reduction generator shall certify its acceptance of the terms of the proposal and certify that it has achieved or will achieve the emissions reductions specified in the proposal.
- e) The owner or operator of any emissions reduction generator may modify its operating permit to incorporate limitations that make the VOM emissions reductions specified in the relevant proposal enforceable.
 - f) If the emissions reduction generator does not modify its permit, as specified in subsection (e) of this Section, or experiences a shutdown, as specified in subsection (a)(2) or (a)(4) of this Section, and the proposal is submitted prior to the availability of actual VOM emissions data from the relevant seasonal allotment period, the Agency shall determine if the proposal is acceptable on a preliminary basis and provide notification of this determination. The Agency shall not issue final approval, in accordance with subsection (g) of this Section, of any such proposal until the actual VOM emissions data is submitted.
 - g) The Agency shall notify the participating source, new participating source or general participant in writing of its final decision with respect to the proposal within 45 days after receipt of such proposal or receipt of VOM emissions data to verify that the specified reductions occurred, whichever occurs later. If the Agency denies or conditionally approves a proposal, this written notice shall include a statement of the specific reasons for denying or modifying the proposal. The Agency's determination as to the approvability of any proposal submitted pursuant to this Section is subject to review by the Board as provided at 35 Ill. Adm. Code 105.102, provided the proposed emissions reduction generator is not requesting a permit revision. If such a permit revision is requested, the applicable permit review and appeal procedures shall apply.
 - h) If the Agency deems that the proposal is sufficient to receive final approval, the Agency shall issue ATUs in accordance with the following:

- 1) Any ATUs issued pursuant to this subsection shall be issued to the participating source(s), new participating source(s) or general participant identified in the proposal;
- 2) If the emissions reduction generator modifies its operating permit as specified in subsection (e) of this Section, to incorporate limitations that make the VOM emissions reductions specified in the relevant proposal enforceable, ATUs shall be issued on the date such source is required to comply with the limitations in the permit and for each seasonal allotment period thereafter in which the VOM emissions reductions are required by the source's permit;
- 3) If the proposal is based on a partial or complete shut down, as specified in subsection (a)(2) or (a)(4) of this Section, ATUs shall be issued before the seasonal allotment period for each year specified in the proposal;
- 4) If the emissions reduction generator does not modify its permit and the proposal is submitted prior to the availability of actual VOM emissions data from the relevant seasonal allotment period(s), the Agency shall issue ATUs upon final approval which shall occur after actual VOM emissions data is evaluated for the relevant seasonal allotment period;
- 5) If the emissions reduction generator includes information on actual VOM emissions reductions during the seasonal allotment period for which ATUs are sought, ATUs will be issued by the Agency upon final approval of the proposal;
- 6) Except as provided in subsection (h)(7) of this Section, ATUs issued pursuant to this subsection shall only be valid for the seasonal allotment period in which the emissions reductions were achieved;
- 7) If the VOM emissions reductions specified in a proposal are incorporated into the emissions reduction generator's permit or, if the emissions reduction generator shuts down all or a portion of its operations and withdraws all relevant operating permits, ATUs issued pursuant to this subsection shall be valid for the seasonal allotment period following issuance and for the next seasonal allotment period; and
- 8) The number of ATUs issued pursuant to subsection (h)(2) or (h)(3) of this Section based on a proposal under subsection (a)(4) of this Section shall be equal to the number of ATUs otherwise issuable under this Section reduced by 12 percent.

Section 205.510 Inter-Sector Transaction

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

a) **Regulatory Based Proposal**

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

b) **Other Proposals**

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

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

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

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

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

SUBPART F: MARKET TRANSACTIONS

Section 205.600 ERMS Database

- a) The Agency or its designee shall maintain a bulletin board that shall be available for public access on which a listing of the status of ATUs will be posted. Other public information and notices will also be posted and participating sources, new participating sources and general participants may post ATUs available for purchase or wanted for purchase. The bulletin board shall include the following information on ATUs:
 - 1) Date issued and source issued to;
 - 2) Where applicable, date transferred and source or person transferred to;
 - 3) Status of ATUs in each account, i.e., available for use, or date retired or date expired; and
 - 4) Posted each week during the reconciliation period and no less than monthly at all other times, the average price paid for ATUs transferred the previous week or the previous month, as appropriate.
- b) The Agency or its designee shall maintain a Transaction Account database. Information contained on this database shall be considered the official record of the ERMS. Account officer(s) may request status updates for accounts for which they are designated. The database shall include information on all ATUs held in each account.
- c) The Agency or its designee shall separately maintain a listing of all ATUs expired or retired within the most recent five years, including the date of expiration or retirement.

Section 205.610 Application for Transaction Account

- a) Each participating source, new participating source and general participant shall apply for and obtain authorization for a Transaction Account from the Agency prior to conducting any market transactions. Each participating source shall submit to the Agency its completed application for a Transaction Account no later than 30 days prior to the beginning of the first seasonal allotment period in which the source is required to participate. Each new participating source shall submit to the Agency its completed application for a Transaction Account no later than 30 days prior to the beginning of the first seasonal allotment period in which it is operational.
- b) Each Transaction Account application shall include the following information:
 - 1) The name and address of the participating source, new participating source or general participant, and the name and address of its owner or operator;
 - 2) The names and addresses of all designated account officers;
 - 3) The certification specified in Section 205.620(a)(5) of this Subpart signed by each account officer; and
 - 4) For a participating source or new participating source, identification of the CAAPP permit number for the source.
- c) **Special Participants**

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

Section 205.620 Account Officer

- a) Each participating source, new participating source or general participant must have at least one account officer designated for each of its Transaction Accounts. The account officer(s) shall be the only person(s) authorized to make ATU transactions involving such designated Transaction Account. At least one account officer must certify each official document that pertains to a designated Transaction Account or

associated market transactions. Account officers may be employees or contractors of participating sources, new participating sources or general participants. No participating source, new participating source or general participant may engage in ATU transactions if it does not have an account officer approved by the Agency. Each account officer shall satisfy all of the following:

- 1) Be at least 18 years of age;
- 2) Be an American citizen or a legal alien;
- 3) Have not been convicted of or had a final judgment entered against him or her in any State or federal court for a violation of State or federal air pollution laws or regulations, or for fraud;
- 4) Be scheduled to attend the next scheduled training program or has already completed the program; and
- 5) Certify to the following statement as a part of the relevant Transaction Account application:

I certify that I satisfy all of the requirements for an account officer. I am aware that I may be disqualified from acting as an account officer in the State of Illinois, pursuant to 35 Ill. Adm. Code 205, if any information submitted in this application is determined to be false or misleading.

b) Account Officer Training Program

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

- 1) To attend the account officer training program, a person must enroll with the Agency prior to the date for the next scheduled training program.
- 2) The training program shall cover, at a minimum, the following topics: an overview of the ERMS, forms for the ERMS, market transaction procedures, and operation of the ERMS databases.
- 3) The account officer training program will be offered at least once annually, and may be offered more frequently, depending upon demand. The Agency or its designee shall publish advance notice of the time, date and location for each training program.

c) Disclaimer

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

d) Expedited Approval of Account Officer

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

Section 205.630 ATU Transaction Procedures

Recognized sales and purchases of ATUs may be made between any two Transaction Accounts or from a Transaction Account to the ACMA. A sale of ATUs may also be made from a Transaction Account to a special participant. No sale of ATUs shall be recognized from a special participant to any other person.

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

- 1) Transfers between Transaction Accounts may only be made by the account officers for both accounts;
- 2) All ATU transfers shall be duly authorized by the account officers for both Transaction Accounts, or, if the ATUs are being transferred to a special participant, the account officer of the Transaction Account of the transferor and a representative of the special participant;
 - A) Duly authorized ATU transfers shall identify the ATU(s) involved in the transaction;
 - B) Written ATU transfer agreements signed by the account officers for both Transaction Accounts may authorize the transfer of ATUs for more than one season. If a transfer agreement authorizes the future transfer of ATUs for any

season for which ATUs have not yet been issued for use, the ATUs shall be automatically transferred to the buyer's Transaction Account for each year such transfer is authorized pursuant to the transfer agreement, in which case the account officers for each Transaction Account will be notified of this transfer;

- 3) No transfer shall be considered official for purposes of the ERMS until entered into the Transaction Account database;
 - 4) The Agency or its designee shall enter ATU transfers into the Transaction Account database within one week of the Agency receiving notification of a duly authorized ATU transfer; and
 - 5) Any ATU transfer agreements entered into after December 31 of a given year may not be used by the buyer to cover emissions from the preceding seasonal allotment period, but may only be used prospectively.
- b) The account officers involved in ATU transfers shall report the purchase price for all ATU transfers to the Agency or its designee and shall indicate whether consideration other than the purchase price reported was involved in the transfer.
- c) Transaction Requirements
- 1) Expired or retired ATUs may not be bought or sold;
 - 2) The Transaction Account database must show ATUs proposed for transfer as being held by the selling entity. After such transfer is official as specified in subsection (a)(3) of this Section, the transferee's Transaction Account will show the ATUs subject to such transfer as being held in this Transaction Account;
 - 3) The minimum sale allowed under the ERMS shall be one ATU; and
 - 4) No sale may include partial ATUs.
- d) Official Record of Transactions
- 1) The official record of all ATU transactions and the current status of all ATUs shall be the Transaction Account database.
 - 2) Account officers shall be allowed to inspect their Transaction Account(s) in the Transaction Account database. Any

discrepancies found by the account officer shall be reported to the Agency or its designee along with a request for correction. All data supporting such request shall be sent along with the request for correction. A request for correction may not be used to alter an allotment.

- 3) After the end of each reconciliation period, the Agency shall retire ATUs in the Transaction Account of each participating source or new participating source in the amount specified in Section 205.150(c) or (d) of this Part. If the source does not have sufficient ATUs in its Transaction Account to account for its VOM emissions from the preceding seasonal allotment period, the source shall be subject to emissions excursion compensation in accordance with Section 205.720 of this Part. ATUs shall be retired in order of issuance, unless the account officer for the Transaction Account notifies the Agency in writing to specify which ATUs in the Transaction Account should be retired.

SUBPART G: PERFORMANCE ACCOUNTABILITY

Section 205.700 Compliance Accounting

- a) The owner or operator of each participating source or new participating source shall maintain and retain for five years at the source or at another location agreed to by the Agency, in conjunction with the records it maintains to demonstrate compliance with its CAAPP permit, all of the following documents as its compliance master file:
 - 1) A copy of its seasonal component of its Annual Emissions Report;
 - 2) Information on actual VOM emissions, as recorded in accordance with Section 205.335 of this Part, and as required by the CAAPP permit for the source; and
 - 3) Copies of any transfer agreements for the purchase or sale of ATUs and other documentation associated with the transfer of ATUs.
- b) Compliance Master File Review
 - 1) The owner or operator of each participating source or new participating source shall allow the Agency or an authorized representative to enter and inspect the premises in accordance with Section 39.5(7)(ii) of the Act [415 ILCS 5/39.5(7)(ii)] and to review its compliance master file.

- 2) After the conclusion of each compliance master file review, a report shall be prepared by the Agency and issued to the inspected source that includes the following information:
 - A) An identification of any noncompliance with the requirements of this Part; and
 - B) An evaluation of increases and decreases in emissions of VOMs that are also hazardous air pollutants, as related to ATU transactions.
- 3) Nothing in this Part shall affect any other obligations of a source to allow inspection(s) under State or federal laws or regulations.

Section 205.710 Alternative Compliance Market Account (ACMA)

- a) The Agency or its designee shall operate the ACMA. The purpose of the ACMA is to serve as a secondary source of ATUs that may be purchased by participating sources and new participating sources, as specified in this Section.
- b) The ATUs in the ACMA will have an indefinite life so long as they remain in the ACMA, but, once purchased, must be used either for the preceding or next seasonal allotment period. If these ATUs are not used for compliance in that seasonal allotment period, they will expire.
- c) ATUs in an amount equal to one percent of each year's allotment shall be issued to the ACMA, beginning in 1999. In addition, ATUs shall be deposited into the ACMA due to source shutdowns, as specified in Sections 205.410(a) and 205.500(b) of this Part. ATUs for the ACMA may also be obtained by the Agency in the following ways:
 - 1) The Agency or its designee is authorized to accept voluntary contributions of ATUs from participating sources or other persons for deposit into the ACMA.
 - 2) The Agency is authorized to deposit ATUs from its purchase of ATUs or to deposit ATUs created from emissions reductions it generates beyond reductions otherwise required by statute or regulation for attainment of the NAAQS for ozone.
- d) Regular Access to ACMA
 - 1) Regular access to the ACMA shall be available when there is sufficient positive balance of ATUs to supply the requesting source. Any participating source or new participating source may

apply to the Agency during the reconciliation period for regular access to the ACMA to purchase ATUs for the preceding seasonal allotment period.

- 2) Within 15 days after receipt of any request for regular access to the ACMA, the Agency shall notify the source if regular access to the ACMA is available or if there are insufficient ATUs in the ACMA for regular access. The Agency shall also advise any participating source that special access is available when regular access is unavailable.
- 3) After being granted regular access to the ACMA by the Agency, a participating source or new participating source may purchase ATUs from the ACMA at the rate of \$1,000 per ATU or 1.5 times the average market price, as determined by the Agency, whichever is less. ATUs shall only be available at 1.5 times the market price if sufficient single season ATUs transfers have occurred with a purchase price that fully reflects the consideration involved in the transfer to establish an average market price. All payments for ATUs from the ACMA shall be made to the Agency or the Agency's designee for deposit into the Alternative Compliance Market Account Fund.

e) Special Access to ACMA

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

- 1) The Agency shall credit the ACMA with up to one percent of ATUs from the seasonal allotment for the next seasonal allotment period as an advance to provide assistance for special access to be granted, as provided in subsection (e)(2) of this Section. Special access to the ACMA shall only be allowed to the extent that such access does not exceed this one percent of the next seasonal allotment.
- 2) To the extent allowed pursuant to subsection (e)(1) of this Section, the Agency shall grant special access to the ACMA to any participating source if the source submits a written request demonstrating that the following exist:
 - A) During the reconciliation period the source has not been able to obtain regular access to the ACMA and has not been able to obtain ATUs in the market; and

- B) Actual seasonal emissions have exceeded ATUs held by the source for the applicable seasonal allotment period.
- 3) After being granted special access to the ACMA, a participating source may purchase ATUs at the rate of \$1100 per ATU or 2 times the average market price, as determined by the Agency, whichever is less. ATUs shall only be available at 2 times the market price if sufficient single season ATUs transfers have occurred with a purchase price that fully reflects the consideration involved in the transfer to establish an average market price. All payments for ATUs from the ACMA shall be made payable to the Agency or the Agency's designee for deposit into the Alternative Compliance Market Account Fund.
- 4) The Agency shall provide written notification, within 15 days after receipt of any request for special access to the ACMA, allowing or denying special access to the ACMA to any participating source requesting such access. If the Agency denies such access, this written notification shall include its reasons for denying access.
- f) Special access to the ACMA will create a need to generate sufficient VOM emissions reductions during the subsequent calendar year to offset the ATUs distributed; in this instance, the Agency shall:
 - 1) Offset these ATUs by crediting any expired ATUs from the Transaction Accounts of all ERMS participants to the ACMA after the end of the reconciliation period;
 - 2) Seek to achieve an equivalent amount of VOM emissions reductions by the end of the subsequent year to offset these ATUs; or
 - 3) Credit the ACMA with the one percent of ATUs, as needed, from the next seasonal allotment, as provided in subsection (e)(1) of this Section.
- g) The Agency is authorized to use moneys derived from the sale of ATUs from the ACMA to develop and implement additional VOM emissions reductions. If the ACMA is operating without a positive balance, the Agency shall endeavor to generate new emissions reductions whenever possible.
- h) Limitations on Operation of ACMA

The ability of new participating sources to obtain ATUs from the ACMA shall be limited through the seasonal allotment period of 2002, in the

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

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

Section 205.720 Emissions Excursion Compensation

The Agency shall obtain emissions excursion compensation from any participating source or new participating source that does not hold ATUs in accordance with Section 205.150(c) or (d) of this Part by the conclusion of the reconciliation period. For any emissions excursion during 1999 by a participating or new participating source that was not issued a CAAPP permit before May 1, 1998, all references in subsections (b)(1) and (b)(3), (c) and (e) of this Section to 1.2 times the emissions excursion shall be 1.0 times the emissions excursion. The Agency shall obtain emissions excursion compensation pursuant to the following procedures.

- a) The Agency shall issue an Excursion Compensation Notice to any such source when an apparent emissions excursion is identified by the Agency.
- b) Except as provided in subsection (c) of this Section, the Excursion Compensation Notice shall require the source to provide compensation in the following manner:
 - 1) The participating source or new participating source shall purchase ATUs from the ACMA in an amount equivalent to 1.2 times the emissions excursion;
 - 2) For the second consecutive seasonal allotment period in which an emissions excursion occurred, the participating source or new participating source shall purchase ATUs from the ACMA in an amount equivalent to 1.5 times the emissions excursion; or
 - 3) If the ACMA balance is not adequate to cover 1.2 times or, when required, 1.5 times the total emissions excursion amount, the Agency shall deduct ATUs equivalent to 1.2 times or, when required, 1.5 times the total emissions excursion or any remaining portion thereof from the source's next allotment of ATUs.
- c) Within 15 days after receipt of an Excursion Compensation Notice, the owner or operator of the subject source may apply to the Agency to

request that ATUs in an amount equivalent to 1.2 times or, when required, 1.5 times the emissions excursion be deducted from the source's next seasonal allotment, rather than acquired from the ACMA.

- d) Any source issued an Excursion Compensation Notice may contest the Agency's findings by filing a petition with the Board requesting review of the Emissions Excursion Compensation Notice in accordance with the procedures specified in 35 Ill. Adm. Code 105.102.
- e) If any source contests the Agency's findings in the Excursion Compensation Notice, the Agency shall withhold ATUs in an amount equivalent to 1.2 times or, when required, 1.5 times the amount of the alleged emissions excursion from the source's next seasonal allotment. These ATUs shall be withheld until the Board issues a final order resolving the source's petition contesting the Agency's Excursion Compensation Notice. If the source prevails before the Board, the ATUs withheld shall be transferred to the source's Transaction Account. If the Agency prevails before the Board, the ATUs withheld shall be retired to offset the emissions excursion.
- f) Sources that provide emissions excursion compensation pursuant to this Section shall not be subject to enforcement authority granted to the State or any person under applicable State or federal laws or regulations or any permit conditions. The enforcement authority of the State or any person is only limited by this subsection as it applies to an emissions excursion.

Section 205.730 Excursion Reporting

Upon issuance of each Excursion Compensation Notice to any source that has already had one previous admitted or adjudicated emissions excursion, the source shall submit to the Agency any additional reports required by the source's permit pursuant to Section 39.5(7)(f) of the Act [415 ILCS 5/39.5(7)(f)].

Section 205.740 Enforcement Authority

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

Section 205.750 Emergency Conditions

VOM emissions that are a consequence of an emergency, and are in excess of the technology-based emission rates which are achieved during normal operating conditions,

to the extent that such excess emissions are not caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operation error, shall be deducted from the calculation of actual VOM emissions during the seasonal allotment period in which the emergency occurred, subject to the following:

- a) The owner or operator of the participating source or new participating source shall submit an initial emergency conditions report to the Agency within two days after the time when such excess emissions occurred due to the emergency. The submittal of this initial emergency conditions report shall be sufficient to fulfill the notice requirements of Section 39.5(7)(k) of the Act [415 ILCS 5/39.5(7)(k)] as it relates to VOM emissions at the source if the report provides a detailed description of the emergency, any steps taken to mitigate emissions and corrective actions taken, to the extent practicable. The final report shall contain the following information:
 - 1) A description of the cause(s) of the emergency and the duration of the episode;
 - 2) Verification that the source was being operated properly at the time of the emergency;
 - 3) A demonstration that the source took all reasonable steps to minimize excess VOM emissions during the emergency period, including but not limited to the following actions, if technically and economically feasible:
 - A) The level of operation of the affected emission unit(s) was minimized;
 - B) The level of emissions from the affected emission units(s) was minimized by use of alternative raw materials or alternative control measures;
 - C) The duration of the excess emissions was minimized; and
 - D) The amount of VOM emissions from other emission units at the source or other sources located in the Chicago ozone nonattainment area owned or operated by the person or entity were reduced;
 - 4) A demonstration that appropriate corrective action(s) were taken promptly;
 - 5) A demonstration that the affected emission units were:

- A) Being carefully and properly operated at the time of the emergency, including copies of appropriate records and other relevant evidence;
 - B) Properly designed; and
 - C) Properly maintained with appropriate preventative maintenance; and
- 6) An estimate of the amount of VOM emissions that occurred during the emergency in excess of the technology-based emission factor achieved during normal operating conditions, including supporting data, the relevant emissions factor, and calculations.
- b) The owner or operator of any such source may supplement its initial emergency conditions report within 10 days after the conclusion of the emergency situation.
- c) The Agency must approve, conditionally approve or reject the findings in the final emergency conditions report submitted by the source in writing within 30 days after receipt of a complete report, subject to the following:
- 1) If the Agency concurs with the emergency conditions report, the source is not required to hold ATUs for the excess VOM emissions attributable to the emergency;
 - 2) If the Agency approves with conditions or rejects the emergency conditions report, the source shall be required to hold ATUs by the end of the reconciliation period in an amount not less than the emissions identified as excess in the emergency conditions report or provide emissions excursion compensation in accordance with Section 205.720 of this Subpart, if an emissions excursion occurred;
 - 3) If the Agency approves with conditions an emergency conditions report, the Agency must identify in its written notice the amount of VOM emissions that are not attributable to an emergency; and
 - 4) If the Agency approves with conditions or rejects a source's emergency conditions report, the source may raise the emergency as an affirmative defense pursuant to Section 39.5(7)(k) of the Act [415 ILCS 5/39.5(7)(k)] in any action brought for noncompliance with this Part or an action brought to review the Agency's issuance of an Excursion Compensation Notice, as provided in Section 205.720(d) of this Subpart.

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

Section 205.760 Market System Review Procedures

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

- a) The Annual Performance Review Report will review trends and patterns which may have emerged in the operation of the ERMS, and shall include, but not be limited to, the following:
 - 1) Total aggregate VOM emissions during the previous seasonal allotment period;
 - 2) The number of ATUs retired for compliance purposes or for air quality benefit, currently being banked, or used by new participating sources for the previous seasonal allotment period;
 - 3) An evaluation of trading activities, including sources with no trading activity, sources that are net purchasers of ATUs and sources that are net sellers of ATUs;
 - 4) ACMA transactions since the preparation of the previous report and the account balance;
 - 5) A summary of emissions reduction generator and inter-sector proposals;
 - 6) Distribution of transactions by geographic area or character of source;
 - 7) Availability of ATUs for purchase;
 - 8) The average market price for ATU transactions from the previous seasonal allotment period; and
 - 9) Trends and spatial distributions of hazardous air pollutants.
- b) The Agency shall prepare the Report by May 15 of the year following the seasonal allotment period addressed by the Report. The Agency will make copies of its Report available to interested parties upon request.