

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

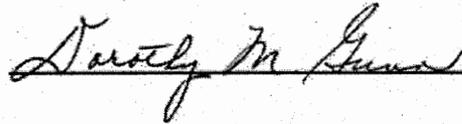
- 4) If the Agency approves with conditions or rejects a source's emergency conditions report, the source may raise the emergency as an affirmative defense pursuant to Section 39.5(7)(k) of the Act [415 ILCS 5/39.5(7)(k)] in any action brought for noncompliance with this Part or an action brought to 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.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board