**Section 205.316 Federally Enforceable State Operating Permits for ERMS Sources**

a) Any participating or new participating source shall not operate without a CAAPP permit or FESOP.

1) If a source has a CAAPP permit containing ERMS provisions and the source elects to obtain a different permit in lieu of the CAAPP permit, the source shall apply for and obtain a FESOP that contains ERMS provisions, including, but not limited to, emissions calculation methodologies, baseline emissions, and allotment for each seasonal allotment period, all of which are identical to those provisions contained in its CAAPP permit.

2) If a participating or new participating source does not have a CAAPP permit containing ERMS provisions and the source elects to obtain a permit other than a CAAPP permit, the source shall apply for and obtain a FESOP that contains, in addition to other necessary provisions, federally enforceable ERMS provisions, including baseline emissions, allotment for each seasonal allotment period, identification of any units deemed to be insignificant activities for the purposes of the ERMS, emissions calculation methodologies, and provisions addressing all other applicable requirements of this Part.

b) When determining the baseline emissions and allotment for a participating source as required under subsection (a)(2) of this Section:

1) The Agency shall determine baseline emissions in accordance with Section 205.320 of this Subpart, through its final permit action on the new or modified FESOP for the source. The Agency's baseline emissions determination may be appealed in accordance with the appeal procedures specified in Section 40 of the Act [415 ILCS 5/40]. 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.

2) 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 FESOP for the source. The Agency's determination may be appealed in accordance with the appeal procedures specified in Section 40 of the Act [415 ILCS 5/40]. 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.

c) The Agency shall determine, in accordance with Sections 205.330 and 205.335 of this Subpart, the methods and practices applicable to the participating source or new participating source to determine seasonal emissions through its final permit action on the new or modified FESOP for such source. The Agency's determination of the methods and practices applicable may be appealed in accordance with the appeal procedures specified in Section 40 of the Act [415 ILCS 5/40].

d) When a FESOP for a participating source or new participating source is transferred from the current permittee to another person:

1) In the case of a name change of the participating source or new 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 or new 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.

e) Upon reopening or renewal of the FESOP 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 FESOP for such source.

f) Upon reopening or renewal of the FESOP 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 FESOP for such source.

(Source: Added at 29 Ill. Reg. 8848, effective June 13, 2005)