

<b>Regulatory Analysis Form</b>		This space for use by IRRC 2000 AUG -3 PM 4:05 REVIEW COMMISSION IRRC Number: 2009	
(1) Agency Department of Environmental Protection			
(2) I.D. Number (Governor's Office Use) 7-345			
(3) Short Title Interstate Ozone Transport Reduction			
(4) PA Code Cite 25 Pa. Code Chapter 145 Interstate Ozone Transport Reduction		(5) Agency Contacts & Telephone Numbers Primary Contact: Sharon Freeman, 717-783-1303 Secondary Contact: Barbara A. Sexton, 717-783-1303	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  The proposed regulation is intended to protect the public health by reducing atmospheric ozone. Subchapter A is designed to reduce a key factor in ozone production, nitrogen oxides. Large stationary sources of nitrogen oxides emissions are responsible for over 65% of such emissions in the Commonwealth during the summer months when ozone levels become a health concern. Subchapter A replaces the existing NOx Allowance Requirements rule in Chapter 123 in order to comply with new Federal rules and to allow Pennsylvania sources to participate in the interstate trading program which is being expanded from the 12 Ozone Transport Region states to the 19 Ozone Transport Assessment Group states. Subchapter A entails an allowance trading program that is administered in an identical fashion to the existing program. The most important aspect of Subchapter A is that it will reduce the ozone season allowable level of emissions from approximately 93,000 tons to 50,843 tons. The rule extends the program to sources located in other states if related Clean Air Act requirements are not sufficient to control these sources.  Subchapters B and C, which were proposed with this rule, are not being finalized at this time.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  "Air Pollution Control Act", 1960, January 8, P.L. (1959) 2119, § 5 (35 P.S. § 4005).			



**(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.**

Yes, under three separate mandates. 1. The requirement is mandated under the Clean Air Act for attainment and maintenance of the NAAQS for ozone in the Philadelphia nonattainment area as defined in the State Implementation Plan. 2. The federal section 126 action promulgated under 40 CFR 52 and 97. 3. The NOx SIP call promulgated under 40 CFR Part 51, §§51.121 and 122.

**(11) Explain the compelling public interest that justifies the regulation. What is the problem that it addresses?**

The primary interest is to protect public and environmental health from tropospheric (ground level outdoor) ozone. Ozone negatively impacts near- and long-term human health, the environment, including crops and trees, and physical property. Although the purpose of the regulation is to reduce ozone by reducing nitrogen oxides, the rule will also serve to protect the public health from a significant level of fine particulates of which nitrogen oxides are a key precursor component. Fine particulates, as well as ozone, cause increased morbidity and mortality.

A secondary interest is that this is one of the actions which the Commonwealth has committed to do as part of its fair share in mitigating ozone transport throughout the Northeastern US. The Commonwealth along with several other Northeast states petitioned EPA through section 126 of the CAA to impose similar controls on upwind states' sources. A federal rule has been finalized as a remedy to the 126 petitions. The Commonwealth was named in several of the petitions. In addition the Commonwealth participated in and supports the conclusions of the Ozone Transport Assessment Group which recommended large NOx emission reductions across the Eastern US and which served as the basis of EPA's section 110 regulatory action. As such, both to comply with the federal regulatory requirements and to demonstrate support and leadership on the issue of mitigating interstate ozone transport, adoption of the final rules is recommended.

In addition, the Commonwealth wishes to avoid Federal Implementation Plans (FIP) or automatic section 126 remedy. In addition, under the FIP, a sanctions clock would simultaneously be started wherein continued failure to comply within 18 months would result in imposition of statewide new source emission offsets at 2 to 1 and six months later would also invoke suspension of all federal highway funding.

**(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.**

Non-regulation will cause the air quality of the Commonwealth to continue to fail to meet the federal standards and result in a serious and cumulative adverse impact on health, general welfare, and the environment. The discussion contained in the regulatory analysis for rule # 7-314 is applicable to this analysis as this rule addresses the same risks in the same manner, and to



a greater extent. That rule expected an 11% reduction with cost savings from 32 to 420 million dollars per year. This rule requires an approximate 45% reduction beyond levels to be attained under the existing NOx allowance rule. This would correlate to a 113 million to 1.25 billion dollars per year health cost savings in Pennsylvania. (This range in savings is largely due to the fact that various authorities disagree on the dollar value of human life.) Welfare risks which include ecosystem, crop, and forest damage are not included in this figure.

**(13) Describe who will benefit from the regulation. (Quantify the benefits completely as possible and approximate the number of people who will benefit.)**

This regulation will provide substantial progress towards attainment of the one-hour ozone standard. In addition, modeling analyses indicate that many areas in the Eastern US will likely be able to meet the eight hour standard if the program is implemented throughout the 19 states covered by the federal rules. Since the emission controls are those which are most highly cost effective of those available to achieve the reductions, the economy as a whole stands to benefit. Particularly, the economy will benefit through avoidance of the need for more costly substitute control measures, particularly in downwind areas which will otherwise be required by the CAA to install compensating controls at much higher costs. The entire population of the Commonwealth as well as the entire populations of states downwind from New Jersey to Maine stand to benefit.

**(14) Describe who will be adversely affected by the regulation. Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.**

Adverse effects are not anticipated to occur as a result of this rule. The emission control costs which the rule will create are quantified and discussed later in this analysis. These costs are not projected to cause adverse effects since no industrial and electric generator will suffer an adverse loss of business because the costs are not high in proportion to revenues and add minimally to operating expenses. In addition, the rules are to be applied uniformly on all similar facilities.

**(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)**

The facilities covered by the subchapter A regulations are those listed under the emission inventory which EPA used to set the NOx trading program budget. Any new (not yet constructed) fossil fuel fired source that is rated at greater than 250 million BTU per hour and any fossil fired electric generating unit rated at greater than 25 megawatts which, if in operation before January 1, 1999 sold electricity to the grid on a firm contract, or in operation after that date and sells any electricity would be subject to the regulation.

**(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.**



These rules are based on the cap and trade regulation promulgated by EPA under part 97. The federal trading program is based on the existing Pennsylvania and Ozone Transport Commission NOx budget program. Changes were made to improve the program and enable it to be extended to a wider number of states and to incorporate the results of numerous public comment periods. The program was first proposed under a federal rulemaking to meet the CAA Section 110 requirements which was opened for comment in September of 1997. Final federal rules were promulgated in October of 1998 after substantial public comment. On a parallel track, EPA published on May 25, 1999 a proposed remedy for its Section 126 petitions, and a proposed Federal NOx Budget Trading Program under part 97 which largely mirror the 110 rules. These rules underwent further public comment and were published as final within the January 18, 2000 Findings of Significant Contribution Rulemaking replacing the default remedy in the May 25, 1999 action.

The Department opened the discussion for this rulemaking on November 19, 1998 at the Air Quality Technical Advisory Committee (AQTAC) to obtain guidance and public input. Public meetings of the AQTAC on December 17 and 18, 1998, provided the Department with the recommendations of the AQTAC as well as a forum for public discussion prior to proposal of the regulations. The regulations were then worked over in detail by AQTAC at the March 25, April 23, and August 23, 1999 and January 13, 2000 meetings. An Advance Notice of Final Rulemaking was published and issues raised therein discussed at the February 16, March 21, and May 23, 2000 AQTAC meetings.

Prior to the closure of the public comment periods, several issues regarding technical aspects of the regulations (allocation methods, new source issues, applicability, etc...) were discussed by AQTAC which guided the Department in drafting a final rule. An Ad HOC subcommittee was formed to investigate monitoring issues. The committee met on several occasions recommending changes to monitoring rules to EPA and the Department. The final rule was presented to the committee and discussed at the May 23, 2000 meeting. The committee recommended that the EQB consider the final rule but expressed concern over several issues. In addition, the Department has met with various industries and electric generation owners and operators to discuss certain technical aspects of the rule. The Department has met with representatives from upwind states to discuss the rule.

**(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.**

For the EGU and non-EGU point sources the existing Pennsylvania budget is approximately 93,000 tons and the new budget for these sources is 50,843 tons for a reduction of approximately 42,000 tons. Currently the average control cost of the beyond RACT controls needed to achieve this reduction (which would achieve reductions in excess of that required), is less than 1500 dollars per ton removed. A simple estimate would then show a cost of 63 million dollars per year. This represents less than one half of one percent of revenues for the EGU sector which is negligible in comparison to the savings of 5 to 30% (depending on customer class), which is accruing due to deregulation of the electric industry.



If the requirements of the rule are applied to sources located in other states, the sources can meet the requirements through installation of highly cost effective controls. A more detailed discussion of control costs is available in the docket to the federal SIP Call and 126 rules.

In addition there are monitoring costs. The overwhelming majority of affected sources are already subject to the monitoring and reporting requirements under the existing program as well as the federal acid rain rules and will not experience increased monitoring costs as a result of these regulations. EPA estimated that for the NOx trading program affected sources (subchapter A) without monitoring equipment in place, costs would be 150 to 400 dollars per ton removed.

**(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting, or consulting procedures which may be required.**

There is no local government involvement associated with this rule, so there are no costs.

**(19) Provide a specific estimate of the costs and/or savings to state government associated with compliance, including any legal, accounting, or consulting procedures which may be required.**

Legal, accounting, and compliance administration burdens should all be reduced compared to traditional command and control approaches. Since the Department will work with EPA to implement the emission reporting and allowance trading systems consolidating the efforts of several states, savings will be significant over other means of implementation involving state-only administration of the rule or any other program which would be needed to achieve the emission reductions. There will be no cost increases that are in addition to those that will be incurred due to the existing NOx Allowance Requirements regulation.

**(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.**

	<b>Current FY</b>	<b>FY+1</b>	<b>FY+2</b>	<b>FY+3</b>	<b>FY+4</b>	<b>FY+5</b>
<b>SAVINGS:</b>	It is not possible to apportion the savings between these entities.					
	Total savings will accrue as identified in (11), (12), (13), (17), (18), and (19).					
<b>Regulated Community</b>	Some portion of health and welfare costs					
<b>Local Government</b>	Some portion of health and welfare costs					
<b>State Government</b>	Some portion of health and welfare costs					
<b>General Public</b>	A significant portion of the health care costs and some welfare costs					
<b>Total Savings</b>	The total benefits as discussed in query (12) for the existing NOx allowance rule ranged from 32 to 420 million dollars per year without inclusion of welfare					



improvements. This rule represents an additional 45% reduction with correlating benefits from 113 million to 1.25 billion dollars per year.

**COSTS:**

**Regulated Community** Total costs for the regulated community is estimated to be approximately 63 million dollars per year.

<b>Local Government</b>	None
<b>State Government.</b>	None
<b>General Public</b>	Nominal cost increases will be passed to state local and general public

**Total Costs**

**REVENUE LOSSES:**

**Regulated Community** Effected sources will internalize cost increases. revenue losses should not occur since all states must comply with the same requirement and potential competitive losses are minimized.

<b>Local Government</b>	None anticipated
<b>State Government</b>	None anticipated

**Total Revenue Losses** None

**(20a) Explain how the cost estimates listed above were derived.**

Cost estimates were derived from actual reported emission levels, reduction targets, and EPA control cost estimates.

**(20b) Provide the past three year expenditure history for programs affected by the regulation.**

The regulation is essentially an amendment to existing rules and does not have an increased impact on any program.

**(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.**

With the limited amount of benefits for which monetary values could be estimated, those benefits alone outweigh the costs and adverse effects.

**(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.**

There are no feasible nonregulatory alternatives.



**(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide reasons for their dismissal.**

The alternative to subchapter A is to establish individual source emission limitations. This would cost at least 30% more than the proposed program.

**(24) Are there any provisions that are more stringent than the federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

No, the rule is consistent with the federal rules.

**(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?**

All the other nearby Midwestern and Eastern states are simultaneously also required to meet similar reduction targets, and with section 145.100 which imposes the same requirements in those states as a backstop, there will be no competitive disadvantages. In fact, since Pennsylvania has already made significant progress towards achieving the budgets, there may be a competitive advantage against Southern and Midwestern sources.

**(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

The regulation will supersede the existing Chapter 123.101-120 provisions as described in the new Section 123.121. Some sources may begin monitoring based on Chapter 145 as early as 2001. Compliance with new NO<sub>x</sub> allowances will be in the control period of 2003.

**(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.**

A 66-day public comment period and three public hearings were held. A total of 45 individuals, organizations, or other entities provided comment. In addition, the Department published an Advance Notice of Final Rulemaking providing an additional 63-day comment period with three public hearings. A total of 134 individuals, organizations, or other entities provided comment.

**(28) Will the regulation change existing reporting, recordkeeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available?**

Most of the affected sources are already subject to the federal rules governing recordkeeping and reporting. All affected sources will be required to comply with the federal rules under this program.



**(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small business, and farmers.**

The new source set aside provisions are designed to allow new businesses to expand on a fair and equal basis to which existing sources were allowed to construct and operate under: none of the existing sources had to buy allowances to operate and will be given allowances at no cost.

**(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses, or other approvals must be obtained?**

The rule becomes effective upon publication in the Pennsylvania Bulletin. Monitoring under the new part 75 requirements is required to begin by May 1, 2001, or a year sooner if early reduction allowances are desired by the source operator.

**(31) Provide the schedule for continual review of the regulation.**

The rule will essentially undergo review in accordance with the Sunset Review Schedule published by the Department.



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REVIEW COMMISSION

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>_____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p>Check if applicable Copy not approved. Objections noted.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>DEPARTMENT OF ENVIRONMENTAL PROTECTION ENVIRONMENTAL QUALITY BOARD (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 7-345</p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>James M. Seif</u></p> <p>TITLE: JAMES M. SEIF, CHAIRMAN (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agency.</p> <p>BY: <u>R. E. Smallegange</u></p> <p>7/24/00 DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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ORDER ADOPTING REGULATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

Interstate Ozone Transport Reduction Requirements

25 Pa. Code, Chapters 123 & 145



**Notice of Final Rulemaking  
Department of Environmental Protection  
Environmental Quality Board  
25 Pa. Code Chapters 123 and 145  
Interstate Ozone Transport Reduction**

**Order**

The Environmental Quality Board (Board) by this Order amends 25 Pa. Code Chapter 123 (relating to standards for contaminants) and adopts a new 25 Pa. Code Chapter 145 (relating to interstate ozone transport reduction) as set forth in Annex A.

The regulations establish a program to limit the emission of nitrogen oxides (NO<sub>x</sub>) from fossil-fired combustion units with rated heat input capacity of greater than 250 MMBtu per hour and electric generating facilities of greater than 25 megawatts. This program which will begin in May 2003 will replace the existing NO<sub>x</sub> allowance requirements contained at 25 Pa. Code Chapter 123. The program will be applicable to sources located in other states that significantly contribute to nonattainment in Pennsylvania if related Clean Air Act programs are not sufficient to control these sources.

The emission limitations for NO<sub>x</sub> emissions from stationary reciprocating internal combustion engines and cement manufacturing operations that were included in the proposed regulation in Subchapters B and C are not being finalized at this time.

The Board approved the final regulations at its meeting of July 18, 2000.

**A. Effective Date**

This rulemaking will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information contact J. Wick Havens, Chief, Division of Air Resources Management, Bureau of Air Quality, 12<sup>th</sup> Floor, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4310 or M. Dukes Pepper, Jr., Assistant Director, Bureau of Regulatory Counsel, 9<sup>th</sup> Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464

(717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). The final regulations are available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

### **C. Statutory Authority**

This action is being taken under the authority of Section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

### **D. Background**

In the 1990 amendments to the federal Clean Air Act (CAA), Congress recognized that ground level ozone (smog) is a regional problem not confined to state boundaries and established special provisions to address ozone nonattainment areas. Section 182 of the Clean Air Act (42 U.S.C. § 7511a) establishes mandatory control requirements based on the severity of the ozone problem. Section 184 of the Clean Air Act (42 U.S.C. § 7511(c)) establishes the Northeast Ozone Transport Commission (OTC) to assist in developing recommendations for the control of interstate air pollution.

Ozone is not directly emitted by pollution sources, but is created as a result of the chemical reaction of NO<sub>x</sub> and volatile organic compounds (VOCs), in the presence of light and heat, to form ozone in the air masses traveling over long distances. Exposure to ozone causes decreased lung capacity, particularly in children and elderly individuals. Decreased lung capacity from ozone exposure can frequently last several hours after the initial exposure. All states in the OTC, except for Vermont, have, since 1990, experienced levels of ozone during the months of May through September in excess of the National Ambient Air Quality Standard (NAAQS).

To address the ozone problem, Section 182 of the federal Clean Air Act (42 U.S.C. § 7511(a)) requires that, for areas which exceed the NAAQS for ozone, states must develop and implement reasonably available control technologies (RACT) for existing major stationary sources emitting NO<sub>x</sub> and VOCs. Because Pennsylvania is included in the OTC, these RACT requirements are applicable throughout the state. Pennsylvania adopted regulations implementing the RACT requirements on January 15, 1994 (24 Pa. B. 459). Implementation of RACT reductions was not sufficient to allow Pennsylvania and other OTC states to achieve the ozone NAAQS.

Because NOx from large fossil-fired combustion units is a major contributor to regional ozone pollution, the OTC member states, including Pennsylvania, proposed development of a regional approach to address NOx emissions. This regional approach resulted in a model rule applicable to "NOx affected sources". NOx affected sources are fossil-fired combustion units with a rated capacity of 250 MMBtus per hour or more and electric generating units of 15 megawatts or greater. This regional approach was adopted by Pennsylvania on November 1, 1997 (27 Pa. B. 5683). These NOx allowance requirements at 25 Pa. Code §§123.101 through 123.120, establish an OTC region-wide market based "cap and trade" program. The "cap and trade" program sets a regulatory limit on mass emissions from the NOx affected sources, allocates allowances (the limited authorization to emit one ton of NOx from May 1 through September 30) to the sources authorizing emissions up to the regulatory limit, and permits trading of allowances to effect cost efficient compliance with the cap. This program is designed to effectuate least cost NOx emission reductions for the years 1999 through 2002.

As additional air quality modeling and analysis was developed, it became apparent that reductions of NOx emissions in the OTC states alone would not result in attainment of the NAAQS along the eastern seaboard (including the Philadelphia Ozone Nonattainment Area). In 1995, the Ozone Transport Assessment Group (OTAG) was formed by the Environmental Council of States and EPA. OTAG's express goal was to "identify and recommend a strategy to reduce transported ozone and its precursors which, in combination with other measures, will enable attainment and maintenance of the National Ambient Ozone Standard in the OTAG region". OTAG was composed of the 37 eastern most states and included participation by EPA, industry and environmental groups. OTAG undertook a comprehensive modeling effort to evaluate the impact on ozone formation and transport resulting from imposition of various emission reduction strategies. OTAG found that ozone transport does occur and that control of NOx reduces this regional transport. OTAG recommended NOx controls on large fossil fuel-fired combustion units in 22 of the 37 states.

As a result of both the OTAG analysis and independent analysis conducted by Pennsylvania and other northeastern states, on August 14, 1997, Governor Ridge filed a Petition with EPA Administrator Browner for abatement of excess emissions under Section 126(b) of the Clean Air Act (42 U.S.C. § 742.6(b)). Pennsylvania's Petition requested a finding that large fossil-fired combustion units and electric generating units in mid-western and southern states significantly contribute to nonattainment of the ozone NAAQS in Pennsylvania. Pennsylvania requested that the Administrator of EPA establish emission limitations for these large NOx emitters. Specifically, Pennsylvania petitioned the Administrator to establish a cap and trade compliance system to provide for the most cost effective emission reductions. Seven other northeastern states filed similar petitions with EPA.

On January 18, 2000, EPA issued the "Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport; Final Rule". 65 Fed. Reg. 2674. In that rulemaking, EPA made a finding that a number of large electric generating units (EGUs) and large industrial boilers and turbines emit in violation of the Clean Air Act prohibition against significantly contributing to nonattainment or interfering with maintenance of the ozone NAAQS in the petitioning States. EPA also finalized the Federal NOx Budget Trading Program as the control remedy for sources affected by the final rule. 40 C.F.R. Part 97. EPA's action on the States 126 Petitions has been challenged in the U.S. Circuit Court for the District of Columbia Circuit. The cases have been consolidated into a single docket, Appalachian Power Company, et al. v. United States Environmental Protection Agency, Docket No. 99-1200.

Because EPA's analysis demonstrated that 22 states and the District of Columbia significantly contribute to nonattainment of the ozone NAAQS in other states, on October 27, 1998, EPA promulgated a final rule requiring those 22 states and the District of Columbia to modify their State Implementation Plans (SIPs) to prevent this significant contribution. This "SIP call" establishes a state NOx budget and requires states to develop mechanisms to ensure that the budget is achieved beginning in 2003. One of the mechanisms proposed by EPA to meet the budget is a cap and trade program for large fossil fired combustion boilers and electric generating units greater than 25 megawatts. EPA developed a model cap and trade rule similar to the OTC model rule. EPA's proposal would extend the market for developing least cost controls to the 22 states and District of Columbia. States were required, by EPA's final SIP call rule, to establish NOx emission programs on or before September 30, 1999. If states fail to establish SIP based programs, EPA indicated that it would impose a Federal Implementation Plan (FIP) under Section 110 of the Clean Air Act (42 U.S.C.A. §7410).

EPA's SIP call was challenged in the U.S. Circuit Court for the District of Columbia Circuit. The challenges were consolidated into a single docket, State of Michigan et al. v. United States Environmental Protection Agency, Docket No 98-1497. Midwestern States requested that the Court stay the September 30, 1999 submission deadline until April 27, 2000. The Court issued a stay but did not include a termination date. On March 3, 2000, the Court issued its substantive decision in the case, upholding most of the NOx SIP call rule, but vacating its applicability, in whole or in part, with respect to three States, and remanding certain discrete portions of the rule to EPA for further action. On June 22, 2000, the Court lifted the Stay and required the NOx SIP to be submitted within 128 days.

Pennsylvania's regulations at 25 Pa. Code Chapter 145, are designed to meet the requirements of the NOx SIP call and the portion of the Section 126 remedy that is applicable to sources located within Pennsylvania. The regulations are

necessary for attainment of the ozone NAAQS in the Philadelphia area and are included in the Philadelphia attainment plan. Pennsylvania used EPA's model cap and trade program rule found in 40 C.F.R. Part 96 and the 126 remedy found in 40 C.F.R. Part 97 as the template for the Chapter 145 rulemaking.

The regulations also represent Pennsylvania's continuing commitment to do its fair share in reducing ozone transport both within Pennsylvania and throughout the northeast.

#### **E. Summary of the Regulatory Revisions**

The final amendments to Chapter 145 Interstate Ozone Transport Reduction contain one subchapter. Subchapter A §§ 145.1-145.100 establishes the NOx budget trading program for fossil-fired combustion boilers with a maximum design heat input greater than 250 million MMBtus per hour and electric utility generators with a rated capacity greater than 25 megawatts. The final rule modifies § 123.115 and adds § 123.121 to eliminate the existing NOx allowance requirements in 2003. Action is being deferred on proposed Subchapters B and C that establish emission limitations for internal combustion engines and cement kilns.

Subchapter A establishes definitions for the following terms: "Account certificate of representation," "Account number," "Acid Rain emissions limitation," "Act," "Administrator," "Allocate or allocation," "Automated data acquisition and handling system (DAHS)," "Boiler," "CAA," "Combined cycle system," "Combustion turbine," "Commence commercial operation," "Commence operation," "Common stack," "Compliance certification," "Compliance account," "Continuous emission monitoring system (CEMS)," "Control period," "Department," "Electricity for Sale Under Firm Contract to the Electric Grid," "Emissions," "Energy Information Administration," "Excess emissions," "Fossil fuel," "Fossil fuel-fired," "General account," "Generator," "Heat input," "Heat Input Rate," "Life-of-the-unit, firm power contractual arrangement," "Maximum design heat input," "Maximum potential hourly heat input," "Maximum potential NOx emission rate," "Maximum rated hourly heat input," "Monitoring system," "Most stringent State or Federal NOx emissions limitation," "Nameplate capacity," "NOx allowance," "NOx allowance deduction or deduct NOx allowances," "NOx allowances held or hold NOx allowances," "NOx Allowance Tracking System," "NOx Allowance Tracking System account," "NOx allowance transfer deadline," "NOx authorized account representative," "NOx budget administrator," "NOx Budget emissions limitation," "NOx Budget opt-in source," "NOx Budget source," "NOx Budget Trading Program," "NOx Budget unit," "Operating," "Operator," "Opt-in," "Overdraft account," "Owner," "Percent Monitor Data Availability," "Potential Electrical Output Capacity," "Receive or receipt of," "Recordation, record, or recorded," "Reference method," "Serial number," "Source," "State trading program budget," "Submit or

serve,” “Ton or tonnage,” “Unit,” “Unit operating day,” and “Unit operating hour or hour of unit operation.” These defined terms are used in the substantive provisions of Subchapter A. Definitions of the terms “fossil fuel-fired”, “Nontitle V Permit”, “NOx budget opt-in permit”, “Title V Operating Permit”, “Title V operating permit regulations”, “unit load” and “utilization” have been deleted from the final regulation.

Subchapter A implements the EPA NOx SIP Call, the portion of the Section 126 remedy applicable to Pennsylvania sources and Clean air Act attainment requirements applicable to Pennsylvania. Subchapter A is necessary for the Philadelphia ozone nonattainment area to attain the one-hour ozone standard. Subchapter A uses the framework from EPA’s model rule developed and promulgated at 40 CFR Part 96 and from EPA’s Section 126 remedy promulgated at 40 CFR Part 97. The Pennsylvania cap and trade rule identifies the facilities subject to regulation in § 145.4 and describes the process for NOx allowance allocation for the May 1 through September 30 control periods in § 145.42. The rule also describes the accounting process for deposit, use and transfer of allowances between NOx budget sources in §§ 145.50-145.62. This includes the compliance requirements in § 145.54. The rule also establishes a process for sources not otherwise covered to “opt in” to the provisions of the rule. The opt-in process is described in §§ 145.80-145.88.

Monitoring, recordkeeping and reporting requirements for sources covered by the rule are contained in §§ 145.70-145.76. In general, the monitoring requirements are consistent with the provisions for the existing NOx budget rule and the EPA acid rain requirements at 40 CFR Part 75. For sources located within Pennsylvania, the Department plans to integrate this trading rule into its existing permitting program.

Emission reduction credit provisions are contained in § 145.90.

As discussed in greater detail below, a new § 145.100 has been added to respond to comments raised by facility owners, the Pennsylvania Legislature and the Independent Regulatory Review Commission. These comments raised concern about program implementation of the rule in Pennsylvania placing Pennsylvania facilities at a competitive disadvantage and about the importance of ensuring that NOx budget sources located in other states do their fair share to ensure attainment and maintenance of the one-hour NAAQS in Pennsylvania. To address this concern, § 145.100 would, under certain circumstances, implement the Interstate Ozone Transport Reduction program in states that significantly contribute to nonattainment in Pennsylvania. These states are: Ohio, West Virginia, Maryland, Delaware, North Carolina, New Jersey and New York and Washington D.C. This provision of the rule would only be applicable if the Section 126 remedy was overturned, the State or Washington D.C. failed to submit a SIP meeting the Clean

Air Act requirements related to significant contribution and EPA failed to impose a Federal Implementation Plan under the Clean Air Act requirements.

Finally, the permitting requirements in §§ 145.20-145.25 have been deleted because they are duplicative. The Department will use the existing permit provisions in Chapter 127 to administer applicable permit requirements.

## **F. Summary of Comments and Changes to the Proposal**

The Board held three public hearings during the 66-day comment period on the proposed regulation. Comments were received from 45 commentators. As a result of those comments and the significant public interest in the rulemaking, the Department prepared draft final regulations for additional comment. The Department held three public hearings during this 30-day additional public comment period. Comments were submitted by 134 commentators.

The final rulemaking makes the substantive requirements Pennsylvania program consistent with the remedy established by EPA under Section 126 of the Clean Air Act. Pennsylvania requested that EPA establish this remedy in the Petition filed by Governor Ridge in August of 1997. The final rulemaking also addresses a concern raised by a number of commentators, including the Independent Regulatory Review Commission, and by the Pennsylvania Legislature related to implementation of the rule in surrounding states. These changes as well as a number of other issues are discussed in more detail below.

### **Summary of Public Comments**

A number of commentators suggested that the facilities covered by the rule and the allocation methodology contained in the rule be consistent with those covered under the EPA model rule published at 40 CFR Part 96. The proposed rule was more protective than the EPA model rule in a number of areas. Subsequent to the close of the public comment period, EPA finalized the remedy under Section 126 of the Clean Air Act. That cap and trade program is codified at 40 CFR Part 97 and is an updated version of the model rule. This final rulemaking covers the same facilities and provides the same exemptions as Part 97. In addition, the substantive provisions of the final rule have been revised to be consistent with Part 97. The Department believes that Part 97 establishes an environmentally sound program that can be implemented regionally.

Section 145.4 of the final rule has been modified to cover electric generating units of greater than 25 MW (rather than 15 as proposed) and includes an exception provision allowing units to avoid coverage by taking appropriate permit restrictions. In addition, § 145.42 of the rule has been modified to establish allocations for five

year periods using average heat input data and an emission rate of 0.15lb/MMBtu for electric generating units and 0.17 lb/MMBtu for nonelectric generating units. In addition to being consistent with the EPA rule, these changes address a number of specific comments received on the proposal.

A number of commentators suggested that the Department make the permitting provisions as simple as possible. Because the Department already has a comprehensive permitting program at 25 Pa. Code Chapter 127, the permitting provisions of the proposed rule have been eliminated. The Department will, where appropriate, as required by the Clean Air Act, incorporate the applicable requirements of this rule into permits issued under Chapter 127.

The Board received numerous comments related to the development of the data base used to establish the Pennsylvania budget and allocations. The Department proposed use of the EPA data base and budget. A number of the commentators from the regulated community indicated that the EPA emission inventory contained errors and should not be used. Instead, they suggested that the Department develop its own inventory and consequently its own budget. The Department disagrees with the approach suggested by these commentators.

The final rulemaking uses the EPA inventory to establish the Pennsylvania budget. This inventory was prepared by EPA with extensive input from states and the regulated community. EPA provided numerous comment periods with opportunities for states, source owners and operators and the public to comment. Pennsylvania worked cooperatively with EPA during this inventory development process. The inventory that was used is one of the best and most comprehensive ever developed. It is based, in large part, on information submitted by sources, and has been subject to numerous public comment periods. The Department has determined that it is the best inventory available at this time and is using it both to establish the Pennsylvania budget and will be using it to establish the allocations to Pennsylvania sources.

The Board received numerous comments requesting that the regulation include a "trigger" provision that would tie implementation of the rule to implementation in surrounding states and to implementation of the EPA NOx SIP Call Rule and the EPA Section 126 Remedy. The basis for these comments was that there needs to be a level playing field between all states subject to the rule to address issues of competitiveness and ensure that all states do their fair share to address ozone pollution in Pennsylvania and the northeast. The final regulation does not include this "trigger" because doing so could unnecessarily delay the important public health and environmental benefits of this regulation. In response to these comments, the final regulation contains a provision that ensures that all facilities that significantly contribute to Pennsylvania's ozone problem reduce their emissions to address the problem. Section 145.100 of the final regulation would, in

certain circumstances, require facilities located in states significantly contributing to nonattainment in Pennsylvania to meet the same emission limitations as facilities located in Pennsylvania. This provision of the regulation does not become effective unless the Section 126 remedy fails, the State does not meet the SIP requirements of the Clean Air Act related to significant contribution and EPA does not establish a FIP to meet those requirements. A discussion of the comments received on this provision is included in the ANFR discussion below.

A number of the commentators raised issues regarding the compliance supplement pool. The major issue raised was that the pool should not establish a “cap” on the amount of banked credits allowed to be transitioned from the existing program established in 25 Pa. Code Chapter 123. The Department has retained this cap. First, it is a reasonable limitation on the size of the bank that gets brought into the new program. Second, this issue was litigated in the federal court challenge to the NO<sub>x</sub> SIP call and the court upheld EPA’s approach.

Several commentators also questioned the compliance provisions contained in § 145.54 of the rule. Specifically, it was suggested that the 3:1 allowance penalty and a failure to hold sufficient allowances being treated as a violation for the entire ozone season were inappropriate. The final regulation retains these provisions. First, these provisions are identical to the provisions in the Department’s existing cap and trade rule at 25 Pa. Code Chapter 123. Second, these provisions are designed to provide a strong incentive for facility owners to comply with the rule. Only facilities that violate the rule are subject to the imposition of these enforcement tools. Finally, in assessing any civil penalty, the Department must use the factors established in Section 9.1 of the Pennsylvania Air Pollution Control Act. These factors take into account the specific factual circumstances of the violation in developing the penalty.

A number of commentators suggested that the monitoring provisions of this regulation should be identical to the provisions in the existing regulation in Chapter 123. The final form regulation includes the monitoring provisions established by EPA in Part 97. The Department believes that these monitoring provisions will provide consistent and reliable data for reporting of emissions from facilities participating in the cap and trade program.

#### Advance Notice of Final Rulemaking

The majority of the commentators expressed strong support for the regulation. Environmental and public health organizations as well as the public, including a number of physicians, testified about the real and substantial public health problems caused by ozone pollution and the need for the rule to address these problems in Pennsylvania and surrounding states. These commentators

strongly urged the Department to implement this rule in Pennsylvania regardless of what occurred in other states. They asserted that it would be particularly inappropriate for Pennsylvania, a leader in ozone pollution control, to wait until the most recalcitrant of states implemented a regulation before implementing the program in Pennsylvania. In fact, many of these commentators suggested that Pennsylvania should take the next step and implement additional controls to address acid rain, global warming and mercury contamination.

Virtually all commentators provided comments on § 145.100 of the ANFR. A number of commentators representing the regulated community asserted that this section violated both the Supremacy and Commerce Clauses of the United States Constitution. These same commentators generally suggested that the regulation be made nonseverable so that if a court overturned § 145.100, the remainder of the regulation would not be implemented. The commentators generally asserted that they were seeking a level playing field with other states. A number of these commentators are actively litigating in federal court to prevent imposition of the level playing field they assertedly support in their comments.

Other commentators, primarily those representing environmental, public health and the public supported § 145.100 but suggested that, because of the possibility of successful challenges to that section, it should be severable from the remainder of the rule.

The final regulation retains § 145.100 but provides that this section is not applicable unless the Section 126 remedy fails, the state fails to implement a SIP that meets the significant contribution provisions of the Clean Air Act and EPA fails to promulgate a FIP to meet those Clean Air Act requirements. The Department believes that the provision can be supported under both the Commerce and Supremacy Clauses of the United States Constitution. However, if it becomes necessary to implement the provision and the matter is litigated, this will be a case of first impression in a very difficult area of environmental law. Consequently, the Department is following the general provisions of statutory construction that this provision is severable from the remainder of the regulation.

A number of commentators raised concerns about the 1% set aside for addressing errors in the allocations to individual facilities. The final form regulation eliminates this additional set aside and, instead, allows the 5% set aside to be used for this purpose. This will make the allocations consistent with the approach taken by EPA.

A number of commentators suggested changes to the compliance supplement pool provisions to encourage the development, installation and operation of control technology. Other commentators suggested that the Department require reductions for additional pollutants including sulfur dioxide, carbon dioxide and mercury. The

final regulation in § 145.43 includes incentives for the installation and operation of NO<sub>x</sub> control equipment and for the development of innovative technology that will reduce NO<sub>x</sub> as well as other pollutants.

Finally, a number of commentators repeated the comments they submitted on the proposed regulation in areas where the ANFR did not make the changes they recommended.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) technical aspects of this regulation. At that May 23, 2000, meeting the AQTAC recommended that the Department forward the final regulations to the EQB. The AQTAC did, however, express concern about several issues in the area where the Department has not made the recommended changes. Specifically, AQTAC expressed concern over the allocation methodology, monitoring requirements, source coverage, penalties and renewable energy. In each area, the Department has followed the approach included by EPA in the NO<sub>x</sub> SIP Call and 126 remedy. This supports the national approach for addressing the issues.

## **G. Benefits, Cost and Compliance**

### **Benefits**

Executive Order 1996-1 requires a cost benefit analysis of the amendments. Overall, the citizens of this Commonwealth will benefit from the proposal because the regulation will provide appropriate protection of air quality both in this Commonwealth and the entire eastern United States. In addition to reducing ozone pollution, this program will assist the Commonwealth in meeting its requirements for reasonable further progress and attainment under the Clean Air Act.

### **Compliance Cost**

The controls required to implement this rule are highly cost effective. Compliance costs for sources covered by the trading program are expected to be less than one half of one percent of revenues for the utility sector.

### **Compliance Assistance Plan**

The Department plans to educate and assist the regulated community and the public with understanding these new regulatory requirements.

### Paperwork Requirements

These regulatory changes will have little additional paperwork impact on the regulated entities. This regulation simply extends and builds upon the existing NOx allowance requirements contained in Chapter 123.

### H. Sunset Review

This regulation will be reviewed in accordance with the Sunset Review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

### I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 16, 1997, the Department submitted a copy of the proposed rulemaking to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public. These comments are addressed in the Preamble. The Committees did not provide comments on the proposed rulemaking.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5(d)), these final-form regulations were deemed approved by the House and Senate Environmental Resource Resources and Energy Committees on \_\_\_\_\_. IRRC met on \_\_\_\_\_, and approved the final-form regulations.

### J. Findings of the Board

The Board finds that:

(1) Public notice of the proposed rulemaking was given under Sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. Sections 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code Sections 7.1 and 7.2.

(2) A public comment period and public hearings were provided as required by law.

(3) The modifications to the amendments do not enlarge the purpose of the proposed amendments published at 29 Pa.B. 1319 (March 6, 1999).

(4) This rulemaking is necessary and appropriate for the administration, enforcement and implementation of the Air Pollution Control Act.

(5) This rulemaking is necessary and appropriate to satisfy obligations imposed under the Clean Air Act.

(6) This rulemaking is necessary to achieve and maintain the National Ambient Air Quality Standard for ozone.

**K. Order**

(a) The regulations of the Department of Environmental Protection are amended to read as set forth in Annex A.

(b) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the Pennsylvania Bulletin.

James M. Seif  
Chairperson



1 **Annex A**

2  
3 **TITLE 25. ENVIRONMENTAL PROTECTION**

4 **PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

5 **Subpart C. PROTECTION OF NATURAL RESOURCES**

6 **ARTICLE III. AIR RESOURCES**

7  
8 **CHAPTER 123. STANDARDS FOR CONTAMINANTS**

9  
10 **§ 123.115. Initial NO<sub>x</sub> allowance NO<sub>x</sub> allocations.**

11  
12 (a) The sources contained in Appendix E [A] are subject to the requirements of §§ 123.101–  
13 123.114, 123.116–123.120 and this section. These sources are allocated NO<sub>x</sub> allowances for the  
14 1999–2002 NO<sub>x</sub> allowance control periods as listed in Appendix E [A]. [Except as provided in §  
15 123.120 (relating to audit), if no allocation is specified for NO<sub>x</sub> allowance control periods  
16 beyond 2002, the current allocations continue indefinitely.]

17  
18 \* \* \* \* \*

19  
20 **§ 123.121. NO<sub>x</sub> ALLOWANCE PROGRAM TRANSITION.**

21  
22 **(a) NO<sub>x</sub> ALLOCATIONS FOR THE NO<sub>x</sub> ALLOWANCE CONTROL PERIODS STARTING**

1 MAY 1, 2003, WILL BE DISTRIBUTED IN ACCORDANCE WITH THE REQUIREMENTS  
2 IN CHAPTER 145 (RELATING TO INTERSTATE POLLUTION TRANSPORT  
3 REDUCTION).

4  
5 (b) THE EMISSION LIMITATIONS AND MONITORING REQUIREMENTS  
6 ESTABLISHED IN §§ 123.101–123.120 (RELATING TO NO<sub>x</sub> ALLOWANCE  
7 REQUIREMENTS) ARE REPLACED BY THE REQUIREMENTS IN CHAPTER 145  
8 (RELATING TO INTERSTATE POLLUTION TRANSPORT REDUCTION)  
9 BEGINNING WITH THE MAY 1, 2003 CONTROL PERIOD [EXPIRE ON DECEMBER  
10 31, 2002]. IF A SOURCE HAS FAILED TO DEMONSTRATE COMPLIANCE WITH §  
11 123.111 (RELATING TO FAILURE TO MEET SOURCE COMPLIANCE REQUIREMENTS),  
12 THE PROVISIONS IN § 145.54(d) (RELATING TO COMPLIANCE) SHALL BE USED TO  
13 WITHHOLD NO<sub>x</sub> ALLOWANCES IN CALENDAR YEAR 2003 AND BEYOND. [, IF  
14 NECESSARY] IF NO NO<sub>x</sub> ALLOWANCES ARE PROVIDED TO THE SOURCE UNDER §  
15 145.42 (RELATING TO NO<sub>x</sub> ALLOWANCE ALLOCATIONS), THE SOURCE WILL BE  
16 OBLIGATED TO ACQUIRE AND RETIRE A NUMBER OF NO<sub>x</sub> ALLOWANCES AS  
17 SPECIFIED IN § 145.54.

18  
19 *(Editor's Note: Chapter 145 is new and has been printed in regular type to enhance readability.)*

20  
21 **CHAPTER 145. INTERSTATE POLLUTION TRANSPORT REDUCTION**

22  
23 **Subchapter A. NO<sub>x</sub> BUDGET TRADING PROGRAM**

1

2

**GENERAL PROVISIONS**

3

4 145.1. Purpose.

5 145.2. Definitions.

6 145.3. Measurements, abbreviations and acronyms.

7 145.4. Applicability.

8 145.5. Retired unit exemption.

9 145.6. Standard requirements.

10 145.7. Computation of time.

11

12

**NO<sub>x</sub> ACCOUNT**

13

14 145.10. Authorization and responsibilities of the NO<sub>x</sub> authorized account representative.

15 145.11. Alternate NO<sub>x</sub> authorized account representative.

16 145.12. Changing the NO<sub>x</sub> authorized account representative and the alternate NO<sub>x</sub>  
17 authorized account representative; changes in the owners and operators.

18 145.13. Account certificate of representation.

19 145.14. Objectives concerning the NO<sub>x</sub> authorized account representative.

20

21

**[PERMIT REQUIREMENTS]**

22

23 [145.20. **General NO<sub>x</sub> budget trading program permit requirements.**]

- 1 [145.21. **NO<sub>x</sub> budget permit applications.]**
- 2 [145.22. **Information requirements for NO<sub>x</sub> budget permit applications.]**
- 3 [145.23. **NO<sub>x</sub> budget permit contents.]**
- 4 [145.24. **Effective date of initial NO<sub>x</sub> budget permit.]**
- 5 [145.25. **NO<sub>x</sub> budget permit revisions.]**

6

7 **COMPLIANCE CERTIFICATION**

8

- 9 145.30. Compliance certification report.
- 10 145.31. The Department's action on compliance certifications.

11

12 **NO<sub>x</sub> ALLOWANCE ALLOCATIONS**

13

- 14 145.40. State trading program budget.
- 15 145.41. Timing requirements for NO<sub>x</sub> allowance allocations.
- 16 145.42. NO<sub>x</sub> allowance allocations.
- 17 **145.43. COMPLIANCE SUPPLEMENT POOL.**

18

19 **ACCOUNTING PROCESS FOR DEPOSIT USE AND TRANSFER OF ALLOWANCES**

20

- 21 145.50. NO<sub>x</sub> Allowance Tracking System accounts.
- 22 145.51. Establishment of accounts.
- 23 145.52. NO<sub>x</sub> Allowance Tracking System responsibilities of NO<sub>x</sub> authorized account

- 1 representative.
- 2 143.53. Recordation of NO<sub>x</sub> allowance allocations.
- 3 145.54. Compliance.
- 4 145.55. Banking.
- 5 145.56. Account error.
- 6 145.57. Closing of general accounts.

7

8 **NO<sub>x</sub> ALLOWANCE TRANSFERS**

9

- 10 145.60. Submission of NO<sub>x</sub> allowance transfers.
- 11 145.61. NO<sub>x</sub> transfer recordation.
- 12 145.62. Notification.

13

14 **RECORDKEEPING AND REPORTING REQUIREMENTS**

15

- 16 145.70. General monitoring requirements.
- 17 145.71. Initial certification and recertification procedures.
- 18 145.72. Out of control periods.
- 19 145.73. Notifications.
- 20 145.74. Recordkeeping and reporting.
- 21 145.75. Petitions.
- 22 145.76. Additional requirements to provide heat input data.

23

1 **OPT-IN PROCESS**

2

- 3 145.80. Applicability for opt-in sources.
- 4 145.81. Opt-in source general provisions.
- 5 145.82. NO<sub>x</sub> authorized account representative for opt-in sources.
- 6 145.83. Applying for an NO<sub>x</sub> budget opt-in **APPROVAL** [permit].
- 7 145.84. Opt-in process.
- 8 145.85. NO<sub>x</sub> budget opt-in **APPLICATION** [permit] contents.
- 9 145.86. Opt-in source withdrawal from NO<sub>x</sub> budget trading program.
- 10 145.87. Opt-in source change in regulatory status.
- 11 145.88. NO<sub>x</sub> allowance allocations to opt-in units.

12

13 **EMISSION REDUCTION CREDIT PROVISIONS**

14

- 15 145.90. Emission reduction credit provisions.

16

17 **INTERSTATE POLLUTION TRANSPORT REDUCTION REQUIREMENTS**

18

19 **145.100. APPLICABILITY TO UPWIND STATES.**

20

21 **GENERAL PROVISIONS**

22

23 **§ 145.1. Purpose.**

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This subchapter establishes general provisions and the applicability, [permitting,] allowance, excess emissions, monitoring and opt-in provisions for the NO<sub>x</sub> Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

**§ 145.2. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Account certificate of representation*—The completed and signed submission certifying the designation of an NO<sub>x</sub> authorized account representative for an NO<sub>x</sub> Budget source or a group of identified NO<sub>x</sub> budget sources who is authorized to represent the owners and operators of the sources and of the NO<sub>x</sub> budget units at the sources with regard to matters under the NO<sub>x</sub> Budget Trading Program.

*Account number*—The identification number given by the Administrator to each NO<sub>x</sub> Allowance Tracking System account.

*Acid rain emissions limitation*—A limitation on emissions of sulfur dioxide or NO<sub>x</sub> under the Acid Rain Program under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7651–7651o).

**ACT – THE AIR POLLUTION CONTROL ACT (35 P.S. §§ 4001—4015).**

1

2 *Administrator*—The Administrator of the EPA or the Administrator's authorized representative.

3

4 *Allocate or allocation*—The determination by the Department of the number of NO<sub>x</sub> allowances to  
5 be initially credited to a NO<sub>x</sub> budget unit or an allocation set-aside.

6

7 *Boiler*—An enclosed fossil or other fuel-fired combustion device [**including process heaters**]  
8 used to produce heat and to transfer heat to recirculating water, steam or other medium.

9

10 **CAA – THE CLEAN AIR ACT (42 U.S.C.A. §§ 7401—7642).**

11

12 *CEMS—Continuous emission monitoring system (CEMS)*—The equipment required under this  
13 subchapter and Chapter 139 (relating to sampling and testing) to sample, analyze, measure and  
14 provide, by readings taken at least once every 15 minutes of the measured parameters, a  
15 permanent record of NO<sub>x</sub> emissions, expressed in **POUNDS [tons]** per hour for NO<sub>x</sub>. The  
16 following systems are component parts included, consistent with **THIS SUBCHAPTER AND**  
17 **40 CFR Part 75** (relating to continuous emission monitoring), in a continuous emission  
18 monitoring system:

19

20 (i) Flow monitor.

21

22 (ii) NO<sub>x</sub> pollutant concentration monitors.

23

1 (iii) Diluent gas monitor (O<sub>2</sub> or CO<sub>2</sub>) [when the monitoring is required by this  
2 subchapter].

3  
4 (iv) A continuous moisture monitor [when the monitoring is required by this  
5 subchapter].

6  
7 (v) A DAHS.

8  
9 *Combined cycle system*—A system comprised of one or more combustion turbines, heat recovery  
10 steam generators and steam turbines configured to improve overall efficiency of electricity  
11 generation or steam production.

12  
13 *Combustion turbine*—An enclosed fossil or other fuel-fired device that is comprised of a  
14 compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion  
15 of fuel in the combustor passes through the turbine, rotating the turbine.

16  
17 *Commence commercial operation*—With regard to a unit that serves a generator, to have begun to  
18 produce steam, gas or other heated medium used to generate electricity for sale or use, including  
19 test generation.

20  
21 (i) Except as provided in §§ 145.4(b) (RELATING TO APPLICABILITY), 145.5  
22 (relating to retired unit exemption), AND §§ 145.80 – 88 (RELATING TO OPT-IN

1        **PROCESS**), for a unit that is a NO<sub>x</sub> budget unit under § 145.4 (relating to applicability)  
2        on the date the unit commences commercial operation, the date shall remain the unit's  
3        date of commencement of commercial operation even if the unit is subsequently  
4        modified, reconstructed or repowered.

5  
6        (ii) Except as provided in §§ **145.4(b)**, 145.5 or §§ 145.80–145.88 (relating to opt-in  
7        process), for a unit that is not a NO<sub>x</sub> budget unit under § 145.4 on the date the unit  
8        commences commercial operation, the date the unit becomes a NO<sub>x</sub> budget unit under §  
9        145.4 is the unit's date of commencement of commercial operation.

10  
11        *Commence operation*—To have begun any mechanical, chemical or electronic process, including,  
12        with regard to a unit, start-up of a unit's combustion chamber.

13  
14        (i) Except as provided in §§ **145.4(b)**, 145.5 **OR §§ 145.80-145.88**, for a unit that is a  
15        NO<sub>x</sub> budget unit under § 145.4 on the date of commencement of operation, the date shall  
16        remain the unit's date of commencement of operation even if the unit is subsequently  
17        modified, reconstructed or repowered.

18  
19        (ii) Except as provided in §§ **145.4(b) (RELATING TO APPLICABILITY)**, 145.5 or  
20        §§ 145.80– 145.88, for a unit that is not a NO<sub>x</sub> budget unit under § 145.4 on the date of  
21        commencement of operation, the date the unit becomes a NO<sub>x</sub> budget unit under § 145.4  
22        shall be the unit's date of commencement of operation.

1 *Common stack*—A single flue through which emissions from two or more units are exhausted.

2

3 *Compliance account*—A NO<sub>x</sub> Allowance Tracking System account for an NO<sub>x</sub> budget unit under  
4 this subchapter, in which the NO<sub>x</sub> allowance allocations for the unit are initially recorded and in  
5 which are held NO<sub>x</sub> allowances available for use by the unit for a control period for the purpose  
6 of meeting the unit's NO<sub>x</sub> budget emissions limitation.

7

8 *Compliance certification*—A submission to the Department and the Administrator that is required  
9 under this subchapter to report a NO<sub>x</sub> budget source's or a NO<sub>x</sub> budget unit's compliance or  
10 noncompliance with this subchapter and that is signed by the NO<sub>x</sub> authorized account  
11 representative in accordance with this subchapter.

12

13 *Control period*—The period beginning May 1 of a year and ending on September 30 of the same  
14 year, inclusive.

15

16 *DAHS—Automated data acquisition and handling system*—The component of the CEMS, or other  
17 emissions monitoring system approved for use under this subchapter and Chapter 139, designed  
18 to interpret and convert individual output signals from pollutant concentration monitors, flow  
19 monitors, diluent gas monitors and other component parts of the monitoring system to produce a  
20 continuous record of the measured parameters in the measurement units required by this  
21 subchapter.

22

23 **ELECTRICITY FOR SALE UNDER FIRM CONTRACT TO THE ELECTRIC GRID—**

1 **ELECTRICITY FOR SALE WHERE THE CAPACITY INVOLVED IS INTENDED TO**  
2 **BE AVAILABLE AT ALL TIMES DURING THE PERIOD COVERED BY A**  
3 **GUARANTEED COMMITMENT TO DELIVER, EVEN UNDER ADVERSE**  
4 **CONDITIONS.**

5  
6 *Emissions*—Air contaminants exhausted from a unit or source into the atmosphere **AS**  
7 **DETERMINED** in accordance with this subchapter.

8  
9 *Energy Information Administration*—The Energy Information Administration of the United States  
10 Department of Energy.

11  
12 *Excess emissions*—Any tonnage of NO<sub>x</sub> emitted by a NO<sub>x</sub> budget unit during a control period that  
13 exceeds the NO<sub>x</sub> budget emissions limitation for the unit.

14  
15 **FOSSIL FUEL—NATURAL GAS, PETROLEUM, COAL, OR ANY FORM OF SOLID,**  
16 **LIQUID, OR GASEOUS FUEL DERIVED FROM SUCH MATERIAL.**

17  
18 **FOSSIL FUEL-FIRED—WITH REGARD TO A UNIT, ONE OF THE FOLLOWING:**

19  
20 **(i) FOR UNITS THAT COMMENCED OPERATION BEFORE JANUARY 1,**  
21 **1996, THE COMBINATION OF FOSSIL FUEL, ALONE OR IN COMBINATION**  
22 **WITH ANY OTHER FUEL, WHERE FOSSIL FUEL ACTUALLY COMBUSTED**  
23 **COMPRISES MORE THAN 50 PERCENT OF THE ANNUAL HEAT INPUT ON**

1 A BTU BASIS DURING 1995, OR, IF A UNIT HAD NO HEAT INPUT IN 1995,  
2 DURING THE LAST YEAR OF OPERATION OF THE UNIT PRIOR TO 1995.

3  
4 (ii) FOR UNITS THAT COMMENCED OPERATION ON OR AFTER JANUARY  
5 1, 1996 AND BEFORE JANUARY 1, 1997, THE COMBINATION OF FOSSIL  
6 FUEL, ALONE OR IN COMBINATION WITH ANY OTHER FUEL, WHERE  
7 FOSSIL FUEL ACTUALLY COMBUSTED COMPRISES MORE THAN 50  
8 PERCENT OF THE ANNUAL HEAT INPUT ON A BTU BASIS DURING 1996.

9  
10 (iii) FOR UNITS THAT COMMENCE OPERATION ON OR AFTER JANUARY  
11 1, 1997,

12  
13 (A) THE COMBINATION OF FOSSIL FUEL, ALONE OR IN  
14 COMBINATION WITH ANY OTHER FUEL, WHERE FOSSIL FUEL  
15 ACTUALLY COMBUSTED COMPRISES MORE THAN 50 PERCENT OF  
16 THE ANNUAL HEAT INPUT ON A BTU BASIS DURING ANY YEAR;  
17 OR

18  
19 (B) THE COMBINATION OF FOSSIL FUEL, ALONE OR IN  
20 COMBINATION WITH ANY OTHER FUEL, WHERE FOSSIL FUEL IS  
21 PROJECTED TO COMPRISE MORE THAN 50 PERCENT OF THE  
22 ANNUAL HEAT INPUT ON A BTU BASIS DURING ANY YEAR,  
23 PROVIDED THAT THE UNIT SHALL BE "FOSSIL FUEL-FIRED" AS

1                   **OF THE DATE, DURING SUCH YEAR, ON WHICH THE UNIT BEGINS**  
2                   **COMBUSTING FOSSIL FUEL.**

3  
4 **[Fossil fuel-fired—With regard to a unit, one of the following:**

5  
6                   **(i) The combustion of fossil fuel, alone or in combination with any other fuel, where**  
7                   **fossil fuel actually combusted comprises more than 50% of the annual heat input on**  
8                   **a Btu basis during any year starting in 1995 or, if a unit had no heat input starting**  
9                   **in 1995, during the last year of operation of the unit prior to 1995.**

10  
11                   **(ii) The combustion of fossil fuel, alone or in combination with any other fuel, where**  
12                   **fossil fuel is projected to comprise more than 50% of the annual heat input on a Btu**  
13                   **basis during any year; provided that the unit shall be "fossil fuel-fired" as of the**  
14                   **date, during the year, on which the unit begins combusting fossil fuel.]**

15  
16 *General account*—A NO<sub>x</sub> Allowance Tracking System account, established under this subchapter,  
17 that is not a compliance account or an overdraft account.

18  
19 *Generator*—A device that produces electricity.

20  
21 *Heat input*—The product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb)  
22 **DIVIDED BY 1,000,000 BTU** and **MULTIPLIED BY** the fuel feed rate into a combustion  
23 device (in mass of fuel/time) as determined in accordance with this subchapter, and does not

1 include the heat derived from preheated combustion air, recirculated flue gases or exhaust from  
2 other sources.

3  
4 **HEAT INPUT RATE—THE AMOUNT OF HEAT INPUT (IN MMBTU) DIVIDED BY**  
5 **UNIT OPERATING TIME (IN HR) OR, WITH REGARD TO A SPECIFIC FUEL, THE**  
6 **AMOUNT OF HEAT INPUT ATTRIBUTED TO THE FUEL (IN MMBTU) DIVIDED BY**  
7 **THE UNIT OPERATING TIME (IN HR) DURING WHICH THE UNIT COMBUSTS**  
8 **THE FUEL.**

9  
10 *Life-of-the-unit, firm power contractual arrangement*—A unit participation power sales agreement  
11 under which a utility or industrial customer reserves, or is entitled to receive, a specified amount  
12 or percentage of nameplate capacity and associated energy from any specified unit and pays its  
13 proportional amount of the unit's total costs, pursuant to a contract for one of the following:

14  
15 (i) The life of the unit.

16  
17 (ii) A cumulative term of at least 30 years, including contracts that permit an election for  
18 early termination.

19  
20 (iii) A period equal to or greater than 25 years or 70% of the economic useful life of the  
21 unit determined as of the time the unit is built, with option rights to purchase or release  
22 some portion of the nameplate capacity and associated energy generated by the unit at the  
23 end of the period.

1

2 *Maximum design heat input*—The ability of a unit to combust a stated maximum amount of fuel  
3 per hour (IN MMBTU/HR) on a steady state basis, as determined by the physical design and  
4 physical characteristics of the unit.

5

6 *Maximum potential hourly heat input*—An hourly heat input (IN MMBTU/HR) used for  
7 reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to  
8 use 40 CFR Part 75 Appendix D (relating to optional SO<sub>2</sub> emissions data PROTOCOL  
9 [protocol] for gas) to report heat input, this value shall be calculated, in accordance with 40 CFR  
10 Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit  
11 intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in  
12 accordance with 40 CFR Part 75, using the maximum potential flow rate and either the  
13 maximum carbon dioxide concentration (in % CO<sub>2</sub>) or the minimum oxygen concentration (in %  
14 O<sub>2</sub>).

15

16 *Maximum potential NO<sub>x</sub> emission rate*—The emission rate of NO<sub>x</sub> (in lb/mmBtu) calculated in  
17 accordance with 40 CFR Part 75 Appendix F, Section 3 (relating to procedure for NO<sub>x</sub> emission  
18 rate), using the maximum potential NO<sub>x</sub> concentration as defined in 40 CFR Part 75 Appendix  
19 A, Section 2 (relating to equipment specifications), and either the maximum O<sub>2</sub> concentration (in  
20 % O<sub>2</sub>) or the minimum CARBON DIOXIDE concentration (in % CO<sub>2</sub>).

21

22 *Maximum rated hourly heat input*—A unit-specific maximum hourly heat input (mmBtu) which is  
23 the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly

1 heat input.

2

3 *Monitoring system*—A monitoring system that meets the requirements of this subchapter,  
4 including a CEMS, an excepted monitoring system or an alternative monitoring system.

5

6 *Most stringent State or Federal NO<sub>x</sub> emissions limitation*—With regard to a NO<sub>x</sub> budget opt-in  
7 source, the lowest NO<sub>x</sub> emissions limitation (in terms of lb/mmBtu) that is applicable to the unit  
8 under State or Federal law, regardless of the averaging period to which the emissions limitation  
9 applies.

10

11 *Nameplate capacity*—The maximum electrical generating output (in MWe) that a generator can  
12 sustain over a specified period of time when not restricted by seasonal or other deratings as  
13 measured in accordance with the United States Department of Energy standards.

14

15 **[Nontitle V permit—A Federally enforceable permit issued by the Department under**  
16 **Chapter 127, Subchapters A, B and F (relating to general; plan approval requirements;**  
17 **and operating permit requirements).]**

18

19 *NO<sub>x</sub> allowance*—An authorization by the Department under the NO<sub>x</sub> Budget Trading Program to  
20 emit up to 1 ton of NO<sub>x</sub> during the control period of the specified year or of any year thereafter,

21 **EXCEPT AS PROVIDED UNDER § 145.54(f) (RELATING TO COMPLIANCE). NO**

22 **PROVISION OF THE NO<sub>x</sub> BUDGET TRADING PROGRAM, ANY PERMIT, OR AN**

23 **EXEMPTION UNDER § 145.4(b) OR § 145.5 AND NO PROVISION OF LAW SHALL**

1 **BE CONSTRUED TO LIMIT THE AUTHORITY OF THE DEPARTMENT OR THE**  
2 **ADMINISTRATOR TO TERMINATE OR LIMIT SUCH AUTHORIZATION, WHICH**  
3 **DOES NOT CONSTITUTE A PROPERTY RIGHT. FOR PURPOSES OF ALL**  
4 **SECTIONS OF THIS SUBCHAPTER EXCEPT §§ 145.41, 145.42, 145.43 OR 145.88, NO<sub>x</sub>**  
5 **ALLOWANCE ALSO INCLUDES AN AUTHORIZATION TO EMIT UP TO ONE TON**  
6 **OF NITROGEN OXIDES DURING THE CONTROL PERIOD OF THE SPECIFIED**  
7 **YEAR OR OF ANY YEAR THEREAFTER BY THE DEPARTMENT OR THE**  
8 **ADMINISTRATOR.**

9  
10 *NO<sub>x</sub> allowance deduction or deduct NO<sub>x</sub> allowances*—The permanent withdrawal of NO<sub>x</sub>  
11 allowances from a NO<sub>x</sub> Allowance Tracking System compliance account or overdraft account to  
12 account for the number of tons of NO<sub>x</sub> emissions from a NO<sub>x</sub> budget unit for a control period,  
13 determined in accordance with this subchapter, or for any other allowance surrender obligation  
14 under this subchapter.

15  
16 *NO<sub>x</sub> allowances held or hold NO<sub>x</sub> allowances*—The NO<sub>x</sub> allowances recorded [**in accordance**  
17 **with]** or submitted for recordation, **IN ACCORDANCE WITH** this subchapter, in a NO<sub>x</sub>  
18 Allowance Tracking System account.

19  
20 *NO<sub>x</sub> Allowance Tracking System*—The system for recording allocations, deductions and transfers  
21 of NO<sub>x</sub> allowances under the NO<sub>x</sub> Budget Trading Program.

22  
23 *NO<sub>x</sub> Allowance Tracking System account*—An account in the NO<sub>x</sub> Allowance Tracking System

1 for purposes of recording the allocation, holding, transferring or deducting of NO<sub>x</sub> allowances.

2

3 *NO<sub>x</sub> allowance transfer deadline*—Midnight of November 30 or, if November 30 is not a business  
4 day, midnight of the first business day thereafter and is the deadline by which NO<sub>x</sub> allowances  
5 may be submitted for recordation in a NO<sub>x</sub> budget unit's compliance account, or the overdraft  
6 account of the source where the unit is located, in order to meet the unit's NO<sub>x</sub> budget emissions  
7 limitation for the control period immediately preceding the deadline.

8

9 *NO<sub>x</sub> authorized account representative*—For an NO<sub>x</sub> budget source or NO<sub>x</sub> budget unit at the  
10 source, the natural person who is authorized by the owners and operators of the source and all  
11 NO<sub>x</sub> budget units at the source, in accordance with **THIS SUBCHAPTER**, to represent and  
12 legally bind each owner and operator in matters pertaining to the NO<sub>x</sub> Budget Trading Program  
13 or, for a general account, the natural person who is authorized, in accordance with this  
14 subchapter, to transfer or otherwise dispose of NO<sub>x</sub> allowances held in the general account.

15

16 **NO<sub>x</sub> BUDGET ADMINISTRATOR – THE PERSON OR AGENCY DESIGNATED BY**  
17 **THE DEPARTMENT TO ADMINISTER THE NO<sub>x</sub> BUDGET TRADING PROGRAM.**  
18 **THIS PERSON MAY BE THE ADMINISTRATOR OF THE UNITED STATES**  
19 **ENVIRONMENTAL PROTECTION AGENCY.**

20

21 *NO<sub>x</sub> budget emissions limitation*—For an NO<sub>x</sub> budget unit, the tonnage equivalent of the NO<sub>x</sub>  
22 allowances available for compliance deduction for the unit and for a control period under §  
23 145.54(a), **[and] (b), (e), AND (f)** (relating to compliance), adjusted by any deductions of the

1 NO<sub>x</sub> allowances to account for actual **HEAT INPUT [utilization]** under § 145.42(e) (relating to  
2 NO<sub>x</sub> allowance allocations) for the control period or to account for excess emissions for a prior  
3 control period under § 145.54(d) or to account for withdrawal from the NO<sub>x</sub> Budget **TRADING**  
4 Program, or for a change in regulatory status, for a NO<sub>x</sub> budget opt-in source under § 145.86 or §  
5 145.87 (relating to opt-in source withdrawal from NO<sub>x</sub> budget **TRADING [training]** program;  
6 and opt-in source change in regulatory status).

7  
8 **[NO<sub>x</sub> budget opt-in permit—An NO<sub>x</sub> budget permit covering an NO<sub>x</sub> budget opt-in source.]**

9  
10 **NO<sub>x</sub> budget opt-in source—A unit that has been elected to become a NO<sub>x</sub> budget unit under the**  
11 **NO<sub>x</sub> Budget Trading Program and whose NO<sub>x</sub> budget opt-in APPROVAL [permit] has been**  
12 **issued and is in effect under this subchapter [and Chapter 127 (relating to construction,**  
13 **modification, reactivation and operation of sources)].**

14  
15 **[NO<sub>x</sub> budget permit—The legally binding and Federally enforceable written document, or**  
16 **portion of the document, issued by the Department, including any permit revisions,**  
17 **specifying the NO<sub>x</sub> Budget Trading Program requirements applicable to a NO<sub>x</sub> budget**  
18 **source, to each NO<sub>x</sub> budget unit at the NO<sub>x</sub> budget source, and to the owners and operators**  
19 **and the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget source and each NO<sub>x</sub>**  
20 **budget unit.]**

21  
22 **NO<sub>x</sub> budget source—A source that includes one or more NO<sub>x</sub> budget units.**

23

1 *NO<sub>x</sub> Budget Trading Program*—A multi-state NO<sub>x</sub> air pollution control and emission reduction  
2 program established in accordance with this subchapter, as a means of mitigating the interstate  
3 transport of ozone and NO<sub>x</sub>, an ozone precursor.

4  
5 *NO<sub>x</sub> budget unit*—A unit that is subject to the NO<sub>x</sub> Budget Trading Program emissions limitation  
6 under § 145.4 or § 145.80.

7  
8 *Operating*—With regard to a unit under §§ 145.22(4)(ii) and 145.80 (relating to [information  
9 requirements for NO<sub>x</sub> budget permit applications; and] application for opt-in sources),  
10 having documented heat input for more than 876 hours in the 6 months immediately preceding  
11 the submission of an application for an initial NO<sub>x</sub> budget OPT-IN APPROVAL [permit]  
12 under § 145.83 (relating to applying for NO<sub>x</sub> budget opt-in APPROVAL [permit]). **THE**  
13 **UNIT'S DOCUMENTED HEAT INPUT WILL BE DETERMINED IN ACCORDANCE**  
14 **WITH 40 CFR PART 75 IF THE UNIT WAS OTHERWISE SUBJECT TO THE**  
15 **REQUIREMENTS OF 40 CFR PART 75 DURING THAT 6-MONTH PERIOD OR WILL**  
16 **BE BASED ON THE BEST AVAILABLE DATA REPORTED TO THE**  
17 **ADMINISTRATOR FOR THE UNIT IF THE UNIT WAS NOT OTHERWISE SUBJECT**  
18 **TO THE REQUIREMENTS OF 40 CFR PART 75 DURING THAT 6-MONTH PERIOD.**

19  
20 *Operator*—A person who operates, controls or supervises an NO<sub>x</sub> budget unit, an NO<sub>x</sub> budget  
21 source or unit for which an application for an NO<sub>x</sub> budget opt-in APPROVAL [permit] under §  
22 145.83 [145.84] is submitted and not denied or withdrawn and shall include, but not be limited  
23 to, a holding company, utility system or plant manager of such a unit or source.

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*Opt-in*—To elect to become an NO<sub>x</sub> budget unit under the NO<sub>x</sub> Budget Trading Program through a final, effective NO<sub>x</sub> budget **OPT-IN APPROVAL [permit]** under this subchapter.

*Overdraft account*—The NO<sub>x</sub> Allowance Tracking System account established under this Subchapter for each NO<sub>x</sub> Budget source where there are two or more NO<sub>x</sub> budget units.

*Owner*—Any of the following persons:

(i) A holder of any portion of the legal or equitable title in a NO<sub>x</sub> budget unit or in a unit for which an application for a NO<sub>x</sub> budget opt-in **APPROVAL [permit]** under § 145.83 is submitted and not denied or withdrawn.

(ii) A holder of a leasehold interest in an NO<sub>x</sub> budget unit or in a unit for which an application for a NO<sub>x</sub> budget opt-in **APPROVAL [permit]** under § 145.83 is submitted and not denied or withdrawn.

(iii) A purchaser of power from an NO<sub>x</sub> budget unit or from a unit for which an application for a NO<sub>x</sub> budget opt-in **APPROVAL [permit]** under § 145.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, an owner may not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the

1 revenues or income from the NO<sub>x</sub> budget unit or the unit for which an application for a  
2 NO<sub>x</sub> budget opt-in APPROVAL [permit] under § 145.83 is submitted and not denied or  
3 withdrawn.

4  
5 (iv) With respect to any general account, a person who has an ownership interest with  
6 respect to the NO<sub>x</sub> allowances held in the general account and who is subject to the  
7 binding agreement for the NO<sub>x</sub> authorized account representative to represent that  
8 person's ownership interest with respect to NO<sub>x</sub> allowances.

9  
10 **PERCENT MONITOR DATA AVAILABILITY—FOR THE PURPOSES OF §§ 145.43(a)(1)**  
11 **AND 145.84(2), THE TOTAL UNIT OPERATING HOURS FOR WHICH QUALITY-**  
12 **ASSURED DATA WERE RECORDED UNDER THIS SUBCHAPTER IN A CONTROL**  
13 **PERIOD, DIVIDED BY THE TOTAL UNIT OPERATING HOURS DURING THE**  
14 **CONTROL PERIOD, AND MULTIPLIED BY 100%.**

15  
16 **POTENTIAL ELECTRICAL OUTPUT CAPACITY—33 PERCENT OF A UNIT'S**  
17 **MAXIMUM DESIGN HEAT INPUT.**

18  
19 *Receive or receipt of*—When referring to the Department, the Administrator or the NO<sub>x</sub> budget  
20 administrator to come into possession of a document, information or correspondence (whether  
21 sent in writing or by authorized electronic transmission), as indicated in an official  
22 correspondence log, or by a notation made on the document, information or correspondence, by  
23 the Department or Administrator in the regular course of business.

1

2 ***Recordation, record or recorded***—With regard to NO<sub>x</sub> allowances, the movement of NO<sub>x</sub>  
3 allowances from one NO<sub>x</sub> Allowance Tracking System account to another, for purposes of  
4 allocation, transfer or deduction.

5

6 ***Reference method***—A direct test method of sampling and analyzing for an air pollutant as  
7 specified in 40 CFR Part 60, Appendix A (relating to specifications and test).

8

9 ***Serial number***—When referring to NO<sub>x</sub> allowances, the unique identification number assigned to  
10 each NO<sub>x</sub> allowance, under § 145.53(c).

11

12 ***Source***—Any governmental, institutional, commercial or industrial structure, installation, plant,  
13 building or facility that emits or has the potential to emit any regulated air pollutant under the  
14 Clean Air Act. For purposes of section 502(c) of the Clean Air Act (42 U.S.C.A. § 7661a(c)), a  
15 source, including a source with multiple units, shall be considered a single facility.

16

17 ***State***—One of the 48 contiguous states and the District of Columbia that adopts an NO<sub>x</sub> Budget  
18 Trading Program [**under this subchapter**]. The term shall have its conventional meaning where  
19 the meaning is clear from the context.

20

21 ***State trading program budget***—The total number of NO<sub>x</sub> tons apportioned to all NO<sub>x</sub> budget units  
22 in a given state, in accordance with the NO<sub>x</sub> Budget Trading Program, for use in a given control  
23 period.

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*Submit or serve*—To send or transmit a document, information, or correspondence to the person **SPECIFIED IN ACCORDANCE WITH THE APPLICABLE REGULATION** by one of the following methods:

(i) In person.

(ii) By United States Postal Service.

(iii) By other means of dispatch or transmission and delivery. **EXCEPT WHERE OTHERWISE EXPRESSLY PROVIDED, [C]**Compliance with any submission, service or mailing deadline shall be determined by the date of dispatch, transmission or mailing and not the date of receipt.

***[Title V operating permit—A permit issued under Chapter 127, Subchapter G (relating to Title V operating permits).]***

***[Title V operating permit regulations—The regulations that the Administrator has approved or issued as meeting the requirements of Title V of the Clean Air Act (42 U.S.C.A. §§ 7661–7661f) and 40 CFR Part 70 or 71 (relating to state operating permit programs; and federal operating permit programs).]***

1 *Ton or tonnage*—Any "short ton" (that is, 2,000 pounds). For the purpose of determining  
2 compliance with the NO<sub>x</sub> budget emissions limitation, total tons for a control period shall be  
3 calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded  
4 hourly emissions rates) in accordance with this subchapter, with any remaining fraction of a ton  
5 equal to or greater than 0.50 ton deemed to equal 1 ton and any fraction of a ton less than 0.50  
6 ton deemed to equal zero tons.

7  
8 *Unit*—A fossil fuel-fired stationary boiler, combustion turbine or combined cycle system.

9  
10 **[Unit load—The total (that is, gross) output of a unit in any control period (or other specified**  
11 **time period) produced by combusting a given heat input of fuel, expressed in terms of one**  
12 **of the following:**

13  
14 **(i) The total electrical generation (MWe) produced by the unit, including generation**  
15 **for use within the plant.**

16  
17 **(ii) In the case of a unit that uses heat input for purposes other than electrical**  
18 **generation, the total steam pressure (psia) produced by the unit, including steam for**  
19 **use by the unit. ]**

20  
21 *Unit operating day*—A calendar day in which a unit combusts any fuel.

22  
23 *Unit operating hour or hour of unit operation*—Any hour (or fraction of an hour) during which a

1 unit combusts any fuel.

2

3 **[Utilization—The heat input (expressed in mmBtu/time) for a unit. The unit's total heat**  
4 **input for the control period in each year will be determined in accordance with 40 CFR**  
5 **Part 75 if the NO<sub>x</sub> Budget unit was otherwise subject to 40 CFR Part 75 for the year, or will**  
6 **be based on the best available data reported to the Department for the unit if the unit was**  
7 **not otherwise subject to the requirements of 40 CFR Part 75 for the year.]**

8

9 **§ 145.3. Measurements, abbreviations and acronyms.**

10

11 Measurements, abbreviations and acronyms used in this **SUBCHAPTER** [part] are defined as  
12 follows:

13

14 *Btu*—British thermal unit.

15

16 *hr*—hour.

17

18 **Kw—KILOWATT ELECTRICAL.**

19

20 *Kwh*—kilowatt hour.

21

22 *lb*—pounds.

1

2 *mmBtu*—million Btu.

3

4 *MWe*—megawatt electrical.

5

6 *ton*—2,000 pounds.

7

8 *CO<sub>2</sub>*—carbon dioxide.

9

10 *NO<sub>x</sub>*—nitrogen oxides.

11

12 *O<sub>2</sub>*—oxygen.

13

14 **§ 145.4. Applicability.**

15

16 **(a)** The following units shall be NO<sub>x</sub> budget units, and any source that includes one or more of  
17 the units shall be a NO<sub>x</sub> budget source, subject to the requirements of this subchapter:

18

19 **(1) ELECTRIC GENERATING UNITS.**

20

21 **(i) FOR UNITS THAT COMMENCED OPERATION BEFORE JANUARY**  
22 **1, 1997, A UNIT SERVING DURING 1995 OR 1996 A GENERATOR**

1 THAT HAD A NAMEPLATE CAPACITY GREATER THAN 25 MWE  
2 AND PRODUCED ELECTRICITY FOR SALE UNDER FIRM  
3 CONTRACT TO THE ELECTRIC GRID.

4  
5 (ii) FOR UNITS THAT COMMENCED OPERATION ON OR AFTER  
6 JANUARY 1, 1997 AND BEFORE JANUARY 1, 1999, A UNIT SERVING  
7 DURING 1997 OR 1998 A GENERATOR THAT HAD A NAMEPLATE  
8 CAPACITY GREATER THAN 25 MWE AND PRODUCED  
9 ELECTRICITY FOR SALE UNDER FIRM CONTRACT TO THE  
10 ELECTRIC GRID.

11  
12 (iii) FOR UNITS THAT COMMENCED OPERATION ON OR AFTER  
13 JANUARY 1, 1999, A UNIT SERVING AT ANY TIME A GENERATOR  
14 THAT HAS A NAMEPLATE CAPACITY GREATER THAN 25 MWE  
15 AND PRODUCES ELECTRICITY FOR SALE.

16  
17 (2) NON-ELECTRIC GENERATING UNITS.

18  
19 (i) FOR UNITS THAT COMMENCED OPERATION BEFORE JANUARY  
20 1, 1997, A UNIT THAT HAS A MAXIMUM DESIGN HEAT INPUT  
21 GREATER THAN 250 MMBTU/HR AND THAT DID NOT SERVE  
22 DURING 1995 OR 1996 A GENERATOR PRODUCING ELECTRICITY  
23 FOR SALE UNDER FIRM CONTRACT TO THE ELECTRIC GRID.

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**(ii) FOR UNITS THAT COMMENCED OPERATION ON OR AFTER  
JANUARY 1, 1997 AND BEFORE JANUARY 1, 1999, A UNIT THAT HAS  
A MAXIMUM DESIGN HEAT INPUT GREATER THAN 250 MMBTU/HR  
AND THAT DID NOT SERVE DURING 1997 OR 1998 A GENERATOR  
PRODUCING ELECTRICITY FOR SALE UNDER FIRM CONTRACT  
TO THE ELECTRIC GRID.**

**(iii) FOR UNITS THAT COMMENCED OPERATION ON OR AFTER  
JANUARY 1, 1999, A UNIT WITH A MAXIMUM DESIGN HEAT INPUT  
GREATER THAN 250 MMBTU/HR THAT:**

**(A) AT NO TIME SERVES A GENERATOR PRODUCING  
ELECTRICITY FOR SALE; OR**

**(B) AT ANY TIME SERVES A GENERATOR PRODUCING  
ELECTRICITY FOR SALE, IF ANY SUCH GENERATOR HAS A  
NAMEPLATE CAPACITY OF 25 MWE OR LESS AND HAS THE  
POTENTIAL TO USE NO MORE THAN 50 PERCENT OF THE  
POTENTIAL ELECTRICAL OUTPUT CAPACITY OF THE UNIT.**

**[(1) A unit that, any time on or after January 1, 1995, serves a generator with a  
nameplate capacity greater than 15 MWe .**

1  
2 **(2) A unit that is not a unit under paragraph (1) and that has a maximum design**  
3 **heat input greater than or equal to 250 mmBtu/hr.]**  
4

5 **(b) 25-TON EXEMPTION.**  
6

7 **(1) NOTWITHSTANDING SUBSECTION (a), A UNIT UNDER PARAGRAPH**  
8 **(a)(1) OR (a)(2) THAT HAS A FEDERALLY ENFORCEABLE PERMIT THAT**  
9 **INCLUDES A NO<sub>x</sub> EMISSION LIMITATION RESTRICTING NO<sub>x</sub> EMISSIONS**  
10 **DURING A CONTROL PERIOD TO 25 TONS OR LESS AND THAT INCLUDES**  
11 **THE SPECIAL PROVISIONS IN PARAGRAPH (b)(4) SHALL BE EXEMPT**  
12 **FROM THE REQUIREMENTS OF THE NO<sub>x</sub> BUDGET TRADING PROGRAM,**  
13 **EXCEPT FOR THE PROVISIONS OF THIS PARAGRAPH AND §§ 145.2, 145.3,**  
14 **145.4(a), 145.7, 145.40 THROUGH 145.62. THE NO<sub>x</sub> EMISSION LIMITATION**  
15 **UNDER THIS PARAGRAPH SHALL RESTRICT NO<sub>x</sub> EMISSIONS DURING**  
16 **THE CONTROL PERIOD BY LIMITING UNIT OPERATING HOURS OR**  
17 **HEAT INPUT. THE RESTRICTION ON UNIT OPERATING HOURS SHALL**  
18 **BE CALCULATED BY DIVIDING THE PERMIT RESTRICTION TONNAGE**  
19 **BY THE UNIT'S MAXIMUM POTENTIAL HOURLY NO<sub>x</sub> MASS EMISSIONS,**  
20 **WHICH SHALL EQUAL THE UNIT'S MAXIMUM RATED HOURLY HEAT**  
21 **INPUT MULTIPLIED BY THE HIGHEST DEFAULT NO<sub>x</sub> EMISSION RATE**  
22 **OTHERWISE APPLICABLE TO THE UNIT UNDER 40 CFR § 75.19. THE**  
23 **RESTRICTION ON HEAT INPUT SHALL BE CALCULATED BY DIVIDING**

1 THE PERMIT RESTRICTION TONNAGE BY THE UNIT'S HIGHEST  
2 DEFAULT NO<sub>x</sub> EMISSION RATE OTHERWISE APPLICABLE TO THE UNIT  
3 UNDER 40 CFR § 75.19

4  
5 (2) THE EXEMPTION UNDER PARAGRAPH (b)(1) SHALL BECOME  
6 EFFECTIVE AS FOLLOWS:

7  
8 (i) THE EXEMPTION SHALL BECOME EFFECTIVE ON THE DATE  
9 ON WHICH THE NO<sub>x</sub> EMISSION LIMITATION AND THE SPECIAL  
10 PROVISIONS IN THE PERMIT UNDER PARAGRAPH (b)(1) BECOME  
11 FINAL; OR

12  
13 (ii) IF THE NO<sub>x</sub> EMISSION LIMITATION AND THE SPECIAL  
14 PROVISIONS IN THE PERMIT UNDER PARAGRAPH (b)(1) BECOME  
15 FINAL DURING A CONTROL PERIOD AND AFTER THE FIRST DATE  
16 ON WHICH THE UNIT OPERATES DURING SUCH CONTROL  
17 PERIOD, THEN THE EXEMPTION SHALL BECOME EFFECTIVE ON  
18 MAY 1 OF SUCH CONTROL PERIOD, PROVIDED THAT SUCH NO<sub>x</sub>  
19 EMISSION LIMITATION AND THE SPECIAL PROVISIONS APPLY TO  
20 THE UNIT AS OF SUCH FIRST DATE OF OPERATION. IF SUCH NO<sub>x</sub>  
21 EMISSION LIMITATION AND SPECIAL PROVISIONS DO NOT APPLY  
22 TO THE UNIT AS OF SUCH FIRST DATE OF OPERATION, THEN THE  
23 EXEMPTION UNDER PARAGRAPH (b)(1) SHALL BECOME

1                   **EFFECTIVE ON OCTOBER 1 OF THE YEAR DURING WHICH SUCH**  
2                   **NO<sub>x</sub> EMISSION LIMITATION AND THE SPECIAL PROVISIONS**  
3                   **BECOME FINAL.**

4  
5                   **(3) THE DEPARTMENT WILL PROVIDE NOTICE TO THE NO<sub>x</sub> BUDGET**  
6                   **ADMINISTRATOR OF THE ISSUANCE OF SUCH PERMIT AND, UPON**  
7                   **REQUEST, A COPY OF THE PERMIT.**

8  
9                   **(4) SPECIAL PROVISIONS.**

10  
11                   **(i) A UNIT EXEMPT UNDER PARAGRAPH (b)(1) SHALL COMPLY**  
12                   **WITH THE RESTRICTION ON UNIT OPERATING HOURS**  
13                   **DESCRIBED IN PARAGRAPH (b)(1) DURING THE CONTROL PERIOD**  
14                   **EACH YEAR.**

15  
16                   **(ii) THE DEPARTMENT WILL ALLOCATE NO<sub>x</sub> ALLOWANCES TO**  
17                   **THE UNIT UNDER §§ 145.41(a) THROUGH (c) AND 145.42 (a)**  
18                   **THROUGH (c). FOR EACH CONTROL PERIOD FOR WHICH THE**  
19                   **UNIT IS ALLOCATED NO<sub>x</sub> ALLOWANCES UNDER §§ 145.41(a)**  
20                   **THROUGH (c) AND 145.42 (a) THROUGH (c) THE FOLLOWING MUST**  
21                   **OCCUR:**

1 (A) THE OWNERS AND OPERATORS OF THE UNIT MUST  
2 SPECIFY A GENERAL ACCOUNT, IN WHICH THE NO<sub>x</sub>  
3 BUDGET ADMINISTRATOR WILL RECORD THE NO<sub>x</sub>  
4 ALLOWANCES.

5  
6 (B) AFTER THE NO<sub>x</sub> BUDGET ADMINISTRATOR RECORDS  
7 NO<sub>x</sub> ALLOWANCES UNDER §§ 145.41 (a) THROUGH (c) AND  
8 145.42 (a) THROUGH (c), THE NO<sub>x</sub> BUDGET ADMINISTRATOR  
9 WILL DEDUCT, FROM THE GENERAL ACCOUNT SPECIFIED  
10 IN CLAUSE (A), NO<sub>x</sub> ALLOWANCES THAT ARE ALLOCATED  
11 FOR THE SAME OR A PRIOR CONTROL PERIOD AS THE NO<sub>x</sub>  
12 ALLOWANCES ALLOCATED TO THE UNIT UNDER §§ 145.41(a)  
13 THROUGH (c) AND 145.42 (a) THROUGH (c) AND THAT EQUAL  
14 THE NO<sub>x</sub> EMISISON LIMITATION (IN TONS OF NO<sub>x</sub>) ON  
15 WHICH THE UNIT'S EXEMPTION UNDER PARAGRAPH (b)(1)  
16 IS BASED. THE NO<sub>x</sub> AUTHORIZED ACCOUNT  
17 REPRESENTATIVE SHALL ENSURE THAT SUCH GENERAL  
18 ACCOUNT CONTAINS THE NO<sub>x</sub> ALLOWANCES NECESSARY  
19 FOR COMPLETION OF SUCH DEDUCTION.

20  
21 (iii) A UNIT EXEMPT UNDER SUBSECTION (b) SHALL REPORT  
22 HOURS OF UNIT OPERATION DURING THE CONTROL PERIOD IN

1 EACH YEAR TO THE DEPARTMENT BY NOVEMBER 1 OF THAT  
2 YEAR.

3  
4 (iv) FOR A PERIOD OF 5 YEARS FROM THE DATE THE RECORDS  
5 ARE CREATED, THE OWNERS AND OPERATORS OF A UNIT  
6 EXEMPT UNDER PARAGRAPH (b)(1) SHALL RETAIN RECORDS  
7 DEMONSTRATING THAT THE CONDITIONS OF THE FEDERALLY  
8 ENFORCEABLE PERMIT UNDER PARAGRAPH (b)(1) WERE MET,  
9 INCLUDING THE RESTRICTION ON UNIT OPERATING HOURS. THE  
10 5-YEAR PERIOD FOR KEEPING RECORDS MAY BE EXTENDED FOR  
11 CAUSE, AT ANY TIME PRIOR TO THE END OF THE PERIOD, IN  
12 WRITING BY THE DEPARTMENT OR ADMINISTRATOR. THE  
13 OWNERS AND OPERATORS BEAR THE BURDEN OF PROOF THAT  
14 THE UNIT MET THE RESTRICTION ON UNIT OPERATING HOURS.

15  
16 (v) THE OWNERS AND OPERATORS AND, TO THE EXTENT  
17 APPLICABLE, THE NO<sub>x</sub> AUTHORIZED ACCOUNT  
18 REPRESENTATIVE OF A UNIT EXEMPT UNDER PARAGRAPH (b)(1)  
19 SHALL COMPLY WITH THE REQUIREMENTS OF THE NO<sub>x</sub> BUDGET  
20 TRADING PROGRAM CONCERNING ALL PERIODS FOR WHICH  
21 THE EXEMPTION IS NOT IN EFFECT, EVEN IF SUCH  
22 REQUIREMENTS ARISE, OR MUST BE COMPLIED WITH, AFTER  
23 THE EXEMPTION TAKES EFFECT.

1  
2 **(vi) ON THE EARLIER OF THE FOLLOWING DATES, A UNIT**  
3 **EXEMPT UNDER PARAGRAPH (b)(1) SHALL LOSE ITS EXEMPTION**  
4 **WHEN ONE OF THE FOLLOWING OCCURS:**  
5

6 **(A) THE DATE ON WHICH THE RESTRICTION ON UNIT**  
7 **OPERATING HOURS DESCRIBED IN PARAGRAPH (b)(1) IS**  
8 **REMOVED FROM THE UNIT'S FEDERALLY ENFORCEABLE**  
9 **PERMIT OR OTHERWISE BECOMES NO LONGER**  
10 **APPLICABLE TO ANY CONTROL PERIOD STARTING IN 2003.**  
11

12 **(B) THE FIRST DATE ON WHICH THE UNIT FAILS TO**  
13 **COMPLY, OR WITH REGARD TO WHICH THE OWNERS AND**  
14 **OPERATORS FAIL TO MEET THEIR BURDEN OF PROVING**  
15 **THAT THE UNIT IS COMPLYING, WITH THE RESTRICTION**  
16 **ON UNIT OPERATING HOURS DESCRIBED IN PARAGRAPH**  
17 **(b)(1) DURING ANY CONTROL PERIOD STARTING IN 2003.**  
18

19 **(vii) A UNIT THAT LOSES ITS EXEMPTION IN ACCORDANCE WITH**  
20 **SUBPARAGRAPH (b)(4)(vi) SHALL BE SUBJECT TO THE**  
21 **REQUIREMENTS OF THIS SUBCHAPTER. FOR THE PURPOSE OF**  
22 **ALLOCATING ALLOWANCES UNDER §§ 145.40 THROUGH 145.43**  
23 **AND APPLYING MONITORING REQUIREMENTS UNDER §§ 145.70**

1                   **THROUGH 145.76, THE UNIT SHALL BE TREATED AS**  
2                   **COMMENCING OPERATION AND, IF THE UNIT IS COVERED BY**  
3                   **PARAGRAPH (a)(1), COMMENCING COMMERCIAL OPERATION ON**  
4                   **THE DATE THE UNIT LOSES ITS EXEMPTION.**

5  
6                   **(viii) A UNIT THAT IS EXEMPT UNDER PARAGRAPH (b)(1) IS NOT**  
7                   **ELIGIBLE TO BE A NO<sub>x</sub> BUDGET OPT-IN UNIT UNDER §§ 145.80**  
8                   **THROUGH 145.88.**

9  
10   **§ 145.5. Retired unit exemption.**

11  
12   **(a) Application.** This section applies to an NO<sub>x</sub> budget unit, other than a NO<sub>x</sub> budget opt-in  
13   source, that is permanently retired.

14  
15   **(b) Requirements.**

16  
17       (1) An NO<sub>x</sub> budget unit, other than an NO<sub>x</sub> budget opt-in source, that is permanently  
18       retired is exempt from the NO<sub>x</sub> Budget Trading Program, except for the provisions of this  
19       section, §§ 145.2, 145.3, 145.4, 145.6, 145.7 and §§ 145.40–145.62.

20  
21       (2) The exemption under paragraph (1) shall become effective the day on which the unit  
22       is permanently retired. Within 30 days of permanent retirement, the NO<sub>x</sub> authorized  
23       account representative (authorized in accordance with this subchapter ) shall submit a

1 statement to the Department. A copy of the statement shall be submitted to the  
2 Administrator. The statement shall state (in a format prescribed by the Department) that  
3 the unit is permanently retired and will comply with subsection (c).  
4

5 (3) After receipt of the notice under paragraph (2), the Department will amend any permit  
6 **ISSUED BY THE DEPARTMENT** covering the source at which the unit is located to  
7 add the provisions and requirements of the exemption under paragraph (1) and subsection  
8 (c).  
9

10 (c) *Special provisions.*  
11

12 (1) A unit exempt under this section may not emit NO<sub>x</sub>, starting on the date that the  
13 exemption takes effect. The owners and operators of the unit will be allocated allowances  
14 in accordance with §§ 145.40–145.42 (relating to NO<sub>x</sub> allowance allocations).  
15

16 (2) A unit exempt under this section may not resume operation unless **AUTHORIZED**  
17 **BY THE DEPARTMENT. THE** [the] NO<sub>x</sub> authorized account representative of the  
18 source **SHALL SUBMIT A RESTART REQUEST TO THE DEPARTMENT**  
19 **[submits a complete NO<sub>x</sub> budget permit application under § 145.22 (relating to**  
20 **information requirements for NO<sub>x</sub> budget permit applications)]** for the unit at least  
21 18 months prior to the date on which the unit is to first resume operation. **THE**  
22 **RESTART REQUEST SHALL, AT A MINIMUM, CONTAIN THE**  
23 **FOLLOWING:**

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**(i) IDENTIFICATION OF THE NO<sub>x</sub> BUDGET SOURCE, INCLUDING THE PLANT NAME AND THE ORIS (OFFICE OF REGULATORY INFORMATION SYSTEMS) OR FACILITY CODE ASSIGNED TO THE SOURCE BY THE ENERGY INFORMATION ADMINISTRATION, IF APPLICABLE.**

**(ii) IDENTIFICATION OF EACH NO<sub>x</sub> BUDGET UNIT AT THE NO<sub>x</sub> BUDGET SOURCE AND WHETHER IT IS AN NO<sub>x</sub> BUDGET UNIT UNDER § 145.4 OR §§ 145.80–145.88 (RELATING TO OPT-IN PROCESS).**

(3) The owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of a unit exempt under this section shall comply with the requirements of the NO<sub>x</sub> Budget Trading Program concerning all periods for which the exemption is not in effect, even if the requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit that is exempt under this section is not eligible to be a NO<sub>x</sub> budget opt-in source under §§ 145.80–145.88 (relating to opt-in process).

(5) For 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records

1 may be extended for cause, at any time prior to the end of the period, in writing by the  
2 Department or the Administrator. The owners and operators bear the burden of proof that  
3 the unit is permanently retired.

4  
5 (6) Loss of an exemption will be as follows:

6  
7 (i) On the earlier of the following dates, a unit exempt under subsection (b) shall  
8 lose its exemption:

9  
10 (A) The date on which the NO<sub>x</sub> authorized account representative submits  
11 a **RESTART** [NO<sub>x</sub> budget permit] application under paragraph (2).

12  
13 (B) The date on which the NO<sub>x</sub> authorized account representative is  
14 required under paragraph (2) to submit a **RESTART** [NO<sub>x</sub> budget  
15 permit] application.

16  
17 (ii) For the purpose of applying monitoring requirements under §§ 145.70–145.76  
18 (relating to recordkeeping and reporting requirements), a unit that loses its  
19 exemption under this section shall be treated as a unit that commences operation  
20 or commercial operation on the first date on which the unit resumes operation.

21  
22 **§ 145.6. Standard requirements.**

1 **[(a) Permit requirements.**

2  
3 **(1) The NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget source and each**  
4 **NO<sub>x</sub> budget unit at the source shall:**

5  
6 **(i) Submit to the Department a complete NO<sub>x</sub> budget permit application**  
7 **under § 145.22 in accordance with the deadlines specified in § 145.21(b)**  
8 **(relating to NO<sub>x</sub> budget permit applications).**

9  
10 **(ii) Submit supplemental information that the Department determines is**  
11 **necessary to review an NO<sub>x</sub> budget permit application and issue or deny an**  
12 **NO<sub>x</sub> budget permit.**

13  
14 **(2) The owners and operators of each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit**  
15 **at the source shall have an NO<sub>x</sub> budget permit issued by the Department and**  
16 **operate the unit in compliance with the NO<sub>x</sub> budget permit.]**

17  
18 **(a) [(b)] Monitoring requirements.**

19  
20 **(1) The owners and operators and the NO<sub>x</sub> authorized account representative of each NO<sub>x</sub>**  
21 **budget source and each NO<sub>x</sub> budget unit at the source shall comply with the monitoring**  
22 **requirements of §§ 145.70–145.76 (relating to recordkeeping and recording**  
23 **requirements).**

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(2) The emissions measurements recorded and reported in accordance with §§ 145.70–145.76 shall be used to determine compliance by the unit with the NO<sub>x</sub> budget emissions limitation under subsection (c).

**(b) [(c)] NO<sub>x</sub> requirements.**

(1) The owners and operators of each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall hold NO<sub>x</sub> allowances available for compliance deductions under § 145.54 (relating to compliance), as of the NO<sub>x</sub> allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO<sub>x</sub> emissions for the control period from the unit, as determined in accordance with §§ 145.70–145.76, plus any amount necessary to account for actual **HEAT INPUT [utilization]** under § 145.42(e) (relating to NO<sub>x</sub> allowance allocation) for the control period **OR TO ACCOUNT FOR EXCESS EMISSIONS FOR A PRIOR CONTROL PERIOD UNDER § 145.54(d) OR TO ACCOUNT FOR WITHDRAWAL FROM THE NO<sub>x</sub> BUDGET TRADING PROGRAM, OR A CHANGE IN REGULATORY STATUS, OF A NO<sub>x</sub> BUDGET OPT-IN UNIT UNDER § 145.89 OR § 145.87.**

(2) Each ton of NO<sub>x</sub> emitted in excess of the NO<sub>x</sub> budget emissions limitation shall constitute a separate violation of this subchapter and the act.

(3) An NO<sub>x</sub> budget unit shall be subject to the requirements under paragraph (1) starting

1 on May 1, 2003, or the date on which the unit commences operation, whichever is later.

2  
3 (4) NO<sub>x</sub> allowances shall be held in, deducted from, or transferred among NO<sub>x</sub> Allowance  
4 Tracking System accounts in accordance with §§ 145.40–145.62 and 145.80–145.88.

5  
6 (5) An NO<sub>x</sub> allowance may not be deducted, to comply with paragraph (1), for a control  
7 period in a year prior to the year for which the NO<sub>x</sub> allowance was allocated.

8  
9 (6) An NO<sub>x</sub> allowance allocated by the Department under the NO<sub>x</sub> Budget Trading  
10 Program is a limited authorization to emit 1 ton of NO<sub>x</sub> in accordance with the NO<sub>x</sub>  
11 Budget Trading Program. No provision of the NO<sub>x</sub> Budget Trading Program [, the NO<sub>x</sub>  
12 budget permit application, the NO<sub>x</sub> budget permit] or an exemption under §§ 145.4(b)  
13 OR 145.5 (relating to APPLICABILITY AND retired unit exemption) and no provision  
14 of law limit the authority of the United States or the Department to terminate or limit the  
15 authorization.

16  
17 (7) An NO<sub>x</sub> allowance allocated by the Department under the NO<sub>x</sub> Budget Trading  
18 Program does not constitute a property right.

19  
20 **(e) [(d)] Excess emissions.** The owners and operators of an NO<sub>x</sub> budget unit that has excess  
21 emissions in any control period shall do the following:

22  
23 (1) Surrender the NO<sub>x</sub> allowances required for deduction under § 145.54(d)(1) (relating to

1 compliance).

2  
3 (2) Pay any fine, penalty or assessment or comply with any other remedy imposed under  
4 § 145.54(d)(3) or the act.

5  
6 **(d) [(e)] Recordkeeping and reporting requirements.**

7  
8 (1) Unless otherwise provided, the owners and operators of the NO<sub>x</sub> budget source and  
9 each NO<sub>x</sub> budget unit at the source shall **MAINTAIN AT A CENTRAL LOCATION**  
10 **AND PROVIDE UPON REQUEST BY THE DEPARTMENT OR THE NO<sub>x</sub>**  
11 **BUDGET ADMINISTRATOR [keep on site at the source each of]** the following  
12 documents for 5 years from the date the document is created. This period may be  
13 extended for cause, at any time prior to the end of 5 years, in writing by the Department  
14 or the Administrator.

15  
16 (i) The account certificate of representation for the NO<sub>x</sub> authorized account  
17 representative for the source and each NO<sub>x</sub> budget unit at the source and all  
18 documents that demonstrate the truth of the statements in the account certificate  
19 of representation, in accordance with § 145.13 (relating to account certificate of  
20 representation). The certificate and documents shall be retained **[on site at the**  
21 **source]** beyond the 5-year period until the documents are superseded because of  
22 the submission of a new account certificate of representation changing the NO<sub>x</sub>  
23 authorized account representative.

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(ii) The emissions monitoring information, in accordance with §§ 145.70–145.76, **TO [to]** the extent that §§ 145.70–145.76 provides for a 3-year period for recordkeeping, the 3-year period applies.

(iii) Copies of all reports, compliance certifications and other submissions and all records made or required under the NO<sub>x</sub> Budget Trading Program.

(iv) Copies of the documents used to complete **[a NO<sub>x</sub> budget permit application and]** any **[other]** submission under the NO<sub>x</sub> Budget Trading Program or to demonstrate compliance with the requirements of the NO<sub>x</sub> Budget Trading Program.

(2) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall submit the reports and compliance certifications required under the NO<sub>x</sub> Budget Trading Program, including those under §§ 145.30 and 145.31 and 145.70–145.88.

**(e) [(f)] Liability.**

(1) A permit revision may not excuse any violation of the requirements of the NO<sub>x</sub> Budget Trading Program that occurs prior to the date that the revision takes effect.

1 (2) Each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit shall meet the requirements of the  
2 NO<sub>x</sub> Budget Trading Program.

3  
4 (3) Any provision of the NO<sub>x</sub> Budget Trading Program that applies to a NO<sub>x</sub> budget  
5 source (including a provision applicable to the NO<sub>x</sub> authorized account representative of  
6 a NO<sub>x</sub> budget source) shall also apply to the owners and operators of the source and of  
7 the NO<sub>x</sub> budget units at the source.

8  
9 (4) Any provision of the NO<sub>x</sub> Budget Trading Program that applies to a NO<sub>x</sub> budget unit  
10 (including a provision applicable to the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub>  
11 budget unit) shall also apply to the owners and operators of the unit. **EXCEPT WITH**  
12 **REGARD TO THE REQUIREMENTS APPLICABLE TO UNITS WITH A**  
13 **COMMON STACK UNDER §§ 145.70—145.76 (RELATING TO**  
14 **RECORDKEEPING AND REPORTING REQUIREMENTS), THE OWNERS**  
15 **AND OPERATORS AND THE NO<sub>x</sub> AUTHORIZED ACCOUNT**  
16 **REPRESENTATIVE OF ONE NO<sub>x</sub> BUDGET UNIT SHALL NOT BE LIABLE**  
17 **FOR ANY VIOLATION BY ANY OTHER NO<sub>x</sub> BUDGET UNIT OF WHICH**  
18 **THEY ARE NOT OWNERS OR OPERATORS OR THE NO<sub>x</sub> AUTHORIZED**  
19 **ACCOUNT REPRESENTATIVE AND THAT IS LOCATED AT A SOURCE OF**  
20 **WHICH THEY ARE NOT OWNERS OR OPERATORS OR THE NO<sub>x</sub>**  
21 **AUTHORIZED ACCOUNT REPRESENTATIVE.**

22  
23 **(f) [(g)]** *Effect on other authorities.* No provision of the NO<sub>x</sub> Budget Trading Program [, a NO<sub>x</sub>

1 **budget permit application, a NO<sub>x</sub> budget permit,] or an exemption under §§ 145.4(b) OR**  
2 **145.5 shall be construed as exempting or excluding the owners and operators and the NO<sub>x</sub>**  
3 **authorized account representative of a NO<sub>x</sub> budget source or NO<sub>x</sub> budget unit from compliance**  
4 **with any other provision of the regulations promulgated under the CAA or the act.**

5  
6 **§ 145.7. Computation of time.**

7  
8 (a) **Unless otherwise stated, any time period scheduled, under the NO<sub>x</sub> Budget Trading Program,**  
9 **to begin on the occurrence of an act or event shall begin on the day the act or event occurs.**

10  
11 (b) **Unless otherwise stated, any time period scheduled, under the NO<sub>x</sub> Budget Trading Program,**  
12 **to begin before the occurrence of an act or event shall be computed so that the period ends the**  
13 **day before the act or event occurs.**

14  
15 (c) **Unless otherwise stated, if the final day of any time period, under the NO<sub>x</sub> Budget Trading**  
16 **Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to**  
17 **the next business day.**

18  
19 **NO<sub>x</sub> ACCOUNT**

20  
21 **§ 145.10. Authorization and responsibilities of the NO<sub>x</sub> authorized account representative.**

1 (a) Except as provided under § 145.11 (relating to alternate NO<sub>x</sub> authorized account  
2 representative), each NO<sub>x</sub> budget source, including all NO<sub>x</sub> budget units at the source, shall have  
3 one and only one NO<sub>x</sub> authorized account representative, with regard to all matters under the  
4 NO<sub>x</sub> Budget Trading Program concerning the source or any NO<sub>x</sub> budget unit at the source.

5

6 (b) The NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget source shall be selected by an  
7 agreement binding on the owners and operators of the source and all NO<sub>x</sub> budget units at the  
8 source.

9

10 (c) Upon receipt by the Department and the NO<sub>x</sub> Budget Administrator of a complete account  
11 certificate of representation under § 145.13 (relating to account certificate of representation), the  
12 NO<sub>x</sub> authorized account representative of the source shall represent and, by his representations,  
13 actions, inactions or submissions, legally bind each owner and operator of the NO<sub>x</sub> budget source  
14 represented and each NO<sub>x</sub> budget unit at the source in all matters pertaining to the NO<sub>x</sub> Budget  
15 Trading Program, notwithstanding any agreement between the NO<sub>x</sub> authorized account  
16 representative and the owners and operators. The owners and operators shall be bound by any  
17 decision or order issued to the NO<sub>x</sub> authorized account representative by the Department, the  
18 Administrator or a court regarding the source or unit.

19

20 (d) A [NO<sub>x</sub> budget permit will not be issued, and an] NO<sub>x</sub> Allowance Tracking System  
21 account will not be established for a NO<sub>x</sub> budget unit at a source, until the Department and the  
22 NO<sub>x</sub> Budget Administrator have received a complete account certificate of representation under  
23 § 145.13 for an NO<sub>x</sub> authorized account representative of the source and the NO<sub>x</sub> budget units at

1 the source.

2

3 (e) Document submission requirements are as follows:

4

5 (1) Each submission under the NO<sub>x</sub> Budget Trading Program shall be submitted, signed  
6 and certified by the NO<sub>x</sub> authorized account representative for each NO<sub>x</sub> budget source  
7 on behalf of which the submission is made. Each submission shall include the following  
8 certification statement by the NO<sub>x</sub> authorized account representative: "I am authorized to  
9 make this submission on behalf of the owners and operators of the NO<sub>x</sub> budget sources or  
10 NO<sub>x</sub> budget units for which the submission is made. I certify under penalty of law that I  
11 have personally examined, and am familiar with, the statements and information  
12 submitted in this document and all its attachments. Based on my inquiry of those  
13 individuals with primary responsibility for obtaining the information, I certify that the  
14 statements and information are to the best of my knowledge and belief true, accurate, and  
15 complete. I am aware that there are significant penalties for submitting false statements  
16 and information or omitting required statements and information, including the  
17 possibility of fine or imprisonment."

18

19 (2) The Department and NO<sub>x</sub> Budget Administrator will accept or act on a submission  
20 made on behalf of owner or operators of an NO<sub>x</sub> budget source or an NO<sub>x</sub> budget unit only  
21 if the submission has been made, signed and certified in accordance with paragraph (1).

22

23 **§ 145.11. Alternate NO<sub>x</sub> authorized account representative.**

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23

(a) An account certificate of representation may designate only one alternate NO<sub>x</sub> authorized account representative who may act on behalf of the NO<sub>x</sub> authorized account representative. The agreement by which the alternate NO<sub>x</sub> authorized account representative is selected shall include a procedure for authorizing the alternate NO<sub>x</sub> authorized account representative to act in lieu of the NO<sub>x</sub> authorized account representative.

(b) Upon receipt by the Department and NO<sub>x</sub> Budget Administrator of a complete account certificate of representation under § 145.13 (relating to account certificate of representation), any representation, action, inaction or submission by the alternate NO<sub>x</sub> authorized account representative shall be deemed to be a representation, action, inaction or submission by the NO<sub>x</sub> authorized account representative.

(c) Except in this section and §§ 145.10(a), 145.12, 145.13 and 145.51, whenever the term "NO<sub>x</sub> authorized account representative" is used in this **SUBCHAPTER [part]**, the term shall include the alternate NO<sub>x</sub> authorized account representative.

**§ 145.12. Changing the NO<sub>x</sub> authorized account representative and the alternate NO<sub>x</sub> authorized account representative; changes in the owners and operators.**

(a) *Changing the NO<sub>x</sub> authorized account representative.* The NO<sub>x</sub> authorized account representative may be changed at any time upon receipt by the Department and the NO<sub>x</sub> Budget Administrator of a superseding complete account certificate of representation under § 145.13

1 (relating to account certificate of representation). Notwithstanding a change, the representations,  
2 actions, inactions and submissions by the previous NO<sub>x</sub> authorized account representative prior  
3 to the time and date when the Department and the NO<sub>x</sub> Budget Administrator receives the  
4 superseding account certificate of representation shall be binding on the new NO<sub>x</sub> authorized  
5 account representative and the owners and operators of the NO<sub>x</sub> budget source and the NO<sub>x</sub>  
6 budget units at the source.

7  
8 (b) *Changing the alternate NO<sub>x</sub> authorized account representative.* The alternate NO<sub>x</sub> authorized  
9 account representative may be changed at any time upon receipt by the Department and the NO<sub>x</sub>  
10 Budget Administrator of a superseding complete account certificate of representation under §  
11 145.13. Notwithstanding a change, the representations, actions, inactions and submissions by the  
12 previous alternate NO<sub>x</sub> authorized account representative prior to the time and date when the  
13 Department and the NO<sub>x</sub> Budget Administrator receives the superseding account certificate of  
14 representation shall be binding on the new alternate NO<sub>x</sub> authorized account representative and  
15 the owners and operators of the NO<sub>x</sub> budget source and the NO<sub>x</sub> budget units at the source.

16  
17 (c) *Changes in the owners and operators.*

18  
19 (1) If a new owner or operator of an NO<sub>x</sub> budget source or an NO<sub>x</sub> budget unit is not  
20 included in the list of owners and operators submitted in the account certificate of  
21 representation, the new owner or operator shall be deemed to be subject to and bound by  
22 the account certificate of representation, the representations, actions, inactions and  
23 submissions of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub>

1 authorized account representative of the source or unit, and the decisions, orders, actions  
2 and inactions of the Department or the NO<sub>x</sub> Budget Administrator, as if the new owner or  
3 operator were included in the list.  
4

5 (2) Within 30 days following any change in the owners and operators of an NO<sub>x</sub> budget  
6 source or a NO<sub>x</sub> budget unit, including the addition of a new owner or operator, the NO<sub>x</sub>  
7 authorized account representative or alternate NO<sub>x</sub> authorized account representative  
8 shall submit a revision to the account certificate of representation amending the list of  
9 owners and operators to include the change.  
10

11 **§ 145.13. Account certificate of representation.**  
12

13 (a) A complete account certificate of representation for an NO<sub>x</sub> authorized account representative  
14 or an alternate NO<sub>x</sub> authorized account representative shall include the following elements in a  
15 format prescribed by the NO<sub>x</sub> Budget Administrator:  
16

17 (1) Identification of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source for  
18 which the account certificate of representation is submitted.  
19

20 (2) The name, address, e-mail address (if any), telephone number and facsimile  
21 transmission number (if any) of the NO<sub>x</sub> authorized account representative and any  
22 alternate NO<sub>x</sub> authorized account representative.  
23

1 (3) A list of the owners and operators of the NO<sub>x</sub> budget source and of each NO<sub>x</sub> budget  
2 unit at the source.

3  
4 (4) The following certification statement by the NO<sub>x</sub> authorized account representative  
5 and any alternate NO<sub>x</sub> authorized account representative: "I certify that I was selected as  
6 the NO<sub>x</sub> authorized account representative or alternate NO<sub>x</sub> authorized account  
7 representative, as applicable, by an agreement binding on the owners and operators of the  
8 NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source. I certify that I have all the  
9 necessary authority to carry out my duties and responsibilities under the NO<sub>x</sub> Budget  
10 Trading Program on behalf of the owners and operators of the NO<sub>x</sub> budget source and of  
11 each NO<sub>x</sub> budget unit at the source and that each such owner and operator shall be fully  
12 bound by my representations, actions, inactions, or submissions and by any decision or  
13 order issued to me by the Department, the Administrator or a court regarding the source  
14 or unit."

15  
16 (5) The signature of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub>  
17 authorized account representative and the dates signed.

18  
19 (b) Unless otherwise required by the Department or the Administrator, documents of agreement  
20 referred to in the account certificate of representation may not be submitted to the Department or  
21 Administrator. The Department and Administrator are not under any obligation to review or  
22 evaluate the sufficiency of these documents, if submitted.

23

1 **§ 145.14. Objections concerning the NO<sub>x</sub> authorized account representative.**

2  
3 (a) Once a complete account certificate of representation under § 145.13 (relating to account  
4 certificate of representation) has been submitted and received, the Department and the NO<sub>x</sub>  
5 Budget Administrator will rely on the account certificate of representation unless a superseding  
6 complete account certificate of representation under § 145.13 is received by the Department and  
7 the NO<sub>x</sub> Budget Administrator.

8  
9 (b) Except as provided in § 145.12(a) or (b) (relating to changing the NO<sub>x</sub> authorized account  
10 representative and the alternate NO<sub>x</sub> authorized account representative; changes in the owners  
11 and operators), an objection or other communication submitted to the Department or  
12 Administrator concerning the authorization, or any representation, action, inaction or submission  
13 of the NO<sub>x</sub> authorized account representative will not affect any representation, action, inaction  
14 or submission of the NO<sub>x</sub> authorized account representative or the finality of a decision or order  
15 by the Department or Administrator under the NO<sub>x</sub> Budget Trading Program.

16  
17 (c) The Department and the Administrator will not adjudicate any private legal dispute  
18 concerning the authorization or any representation, action, inaction or submission of an NO<sub>x</sub>  
19 authorized account representative, including private legal disputes concerning the proceeds of  
20 NO<sub>x</sub> allowance transfers.

21  
22 **[PERMIT REQUIREMENTS]**  
23

1 **[§ 145.20. General NO<sub>x</sub> Budget Trading Program permit requirements.]**

2  
3 **[(a) Each NO<sub>x</sub> budget source shall have an NO<sub>x</sub> budget permit.**

4  
5 **(1) For NO<sub>x</sub> budget sources required to have a Title V operating permit, the NO<sub>x</sub>**  
6 **budget portion of the Title V permit shall be administered in accordance with**  
7 **Chapter 127, Subchapter G (relating to Title V operating permits).**

8  
9 **(2) For NO<sub>x</sub> budget sources required to have a non-Title V permit, the NO<sub>x</sub> budget**  
10 **portion of the non-Title V permit shall be administered in accordance with Chapter**  
11 **127, Subchapters A, B and F (relating to general; plan approval requirements; and**  
12 **operating permit requirements).**

13  
14 **(b) Each NO<sub>x</sub> budget permit shall include applicable NO<sub>x</sub> Budget Trading Program**  
15 **requirements and shall be a complete and segregable portion of the permit under**  
16 **subsection (a).]**

17  
18 **[§ 145.21. NO<sub>x</sub> budget permit applications. ]**

19  
20 **[(a) *Submission of application.* The NO<sub>x</sub> authorized account representative of an NO<sub>x</sub>**  
21 **budget source shall submit to the Department a complete NO<sub>x</sub> budget permit application**  
22 **under § 145.22 (relating to information requirements for NO<sub>x</sub> budget permit applications)**  
23 **by the applicable deadline in subsection (b).**

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**(b) NO<sub>x</sub> budget permits.**

**(1) For any source, with one or more NO<sub>x</sub> budget units under § 145.4 (relating to applicability) that commence operation before January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under § 145.22 and Chapter 127, Subchapters F and G (relating to operating permit requirements; Title V operating requirements) covering the NO<sub>x</sub> budget units to the Department by \_\_\_\_ (Editor's Note: The blank refers to a date 6 months after the effective date of adoption of this proposed rulemaking).**

**(2) For any source, with an NO<sub>x</sub> budget unit under § 145.4 that commences operation on or after January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under § 145.22 and Chapter 127 (relating to construction, modification, reactivation and operation of sources) covering the NO<sub>x</sub> budget unit to the Department as provided for in Chapter 127, Subchapters B, D or E (relating to plan approval requirements; prevention of significant deterioration of air quality; and new source review), whichever is applicable.]**

**[§ 145.22. Information requirements for NO<sub>x</sub> budget permit applications.]**

**[In addition to the requirements of Chapter 127 (relating to construction, modification,**

1 reactivation and operation of sources), a complete NO<sub>x</sub> budget permit application shall  
2 include the following elements concerning the NO<sub>x</sub> budget source for which the application  
3 is submitted, in a format prescribed by the Department:  
4

5 (1) Identification of the NO<sub>x</sub> budget source, including the plant name and the ORIS  
6 (Office of Regulatory Information Systems) or facility code assigned to the source by  
7 the Energy Information Administration, if applicable.  
8

9 (2) Identification of each NO<sub>x</sub> budget unit at the NO<sub>x</sub> budget source and whether it  
10 is an NO<sub>x</sub> budget unit under § 145.4 or §§ 145.80–145.88 (relating to opt-in process).  
11

12 (3) The standard requirements under § 145.6 (relating to standard requirements).  
13

14 (4) For each NO<sub>x</sub> budget opt-in unit at the NO<sub>x</sub> budget source, the following  
15 certification statements by the NO<sub>x</sub> authorized account representative:  
16

17 (i) "I certify that each unit for which this permit application is submitted  
18 under §§ 145.80–145.88 is not a NO<sub>x</sub> budget unit under § 145.4 and is not  
19 covered by a retired unit exemption under § 145.5 that is in effect."  
20

21 (ii) If the application is for an initial NO<sub>x</sub> budget opt-in permit, "I certify that  
22 each unit for which this permit application is submitted under §§ 145.80–  
23 145.88 is currently operating, as that term is defined under § 145.2."]

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**[§ 145.23. NO<sub>x</sub> budget permit contents.]**

**[(a) In addition to the requirements in Chapter 127 (relating to construction, modification, reactivation and operation of sources), an NO<sub>x</sub> budget permit will contain, in a format prescribed by the Department, the elements required for a complete NO<sub>x</sub> budget permit application under § 145.22 (relating to information requirements for NO<sub>x</sub> budget permit applications).**

**(b) An NO<sub>x</sub> budget permit shall incorporate the requirements of this subchapter.]**

**[§ 145.24. Effective date of initial NO<sub>x</sub> budget permit.]**

**[The initial NO<sub>x</sub> budget permit covering an NO<sub>x</sub> budget unit for which a complete NO<sub>x</sub> budget permit application is timely submitted under § 145.21(b) (relating to NO<sub>x</sub> budget permit applications) shall become effective upon issuance.]**

**[§ 145.25. NO<sub>x</sub> Budget permit revisions.]**

**[Revisions to a NO<sub>x</sub> budget permit shall be done in accordance with Chapter 127 (relating to construction, modification, reactivation and operation of sources).]**

1 **COMPLIANCE CERTIFICATION**

2  
3 **§ 145.30. Compliance certification report.**

4  
5 (a) *Applicability and deadline.* [In addition to the requirements of § 127.513 (relating to  
6 **compliance certification**), for] **FOR** each control period in which one or more NO<sub>x</sub> budget  
7 units at a source are subject to the NO<sub>x</sub> budget emissions limitation, the NO<sub>x</sub> authorized account  
8 representative of the source shall submit to the Department and the NO<sub>x</sub> Budget Administrator  
9 by November 30 of that year, a compliance certification report for the source covering all of the  
10 units.

11  
12 (b) *Contents of report.* The NO<sub>x</sub> authorized account representative shall include in the  
13 compliance certification report under subsection (a) the following elements, in a format  
14 prescribed by the **DEPARTMENT [NO<sub>x</sub> Budget Administrator]**, concerning each unit at the  
15 source and subject to the NO<sub>x</sub> budget emissions limitation for the control period covered by the  
16 report:

17  
18 (1) Identification of each NO<sub>x</sub> budget unit.

19  
20 (2) At the NO<sub>x</sub> authorized account representative's option, the serial numbers of the NO<sub>x</sub>  
21 allowances that are to be deducted from each unit's compliance account under § 145.54  
22 (relating to recordation of NO<sub>x</sub> allowance allocations) for the control period.

1 (3) At the NO<sub>x</sub> authorized account representative's option, for units sharing a common  
2 stack and having NO<sub>x</sub> emissions that are not monitored separately or apportioned in  
3 accordance with §§ 145.70–145.76 (relating to recordkeeping and reporting  
4 requirements), the percentage of allowances that is to be deducted from each unit's  
5 compliance account under § 145.54(e) (relating to compliance).

6  
7 (4) The compliance certification under subsection (c).

8  
9 (c) *Compliance certification.* In the compliance certification report under subsection (a), the NO<sub>x</sub>  
10 authorized account representative shall certify, based on reasonable inquiry of those persons with  
11 primary responsibility for operating the source and the NO<sub>x</sub> budget units at the source in  
12 compliance with the NO<sub>x</sub> Budget Trading Program, whether each NO<sub>x</sub> budget unit for which the  
13 compliance certification is submitted was operated during the calendar year covered by the  
14 report in compliance with the requirements of the NO<sub>x</sub> Budget Trading Program applicable to the  
15 unit, including the following:

16  
17 (1) Whether the unit was operated in compliance with the NO<sub>x</sub> budget emissions  
18 limitation.

19  
20 (2) Whether the monitoring plan that governs the unit has been maintained to reflect the  
21 actual operation and monitoring of the unit, and contains the information necessary to  
22 attribute NO<sub>x</sub> emissions to the unit, in accordance with §§ 145.70–145.76.

1 (3) Whether all the NO<sub>x</sub> emissions from the unit, or a group of units (including the unit)  
2 using a common stack, were monitored or accounted for through the missing data  
3 procedures and reported in the quarterly monitoring reports, including whether  
4 conditional data were reported in the quarterly reports in accordance with §§ 145.70–  
5 145.76. If conditional data were reported, the owner or operator shall indicate whether the  
6 status of all conditional data has been resolved and all necessary quarterly report  
7 resubmissions has been made.

8  
9 (4) Whether the facts that form the basis for certification under §§ 145.70–145.76 of each  
10 monitor at the unit or a group of units (including the unit) using a common stack, or for  
11 using an excepted monitoring method or alternative monitoring method approved under  
12 §§ 145.70–145.76, if any, has changed.

13  
14 (5) If a change is required to be reported under paragraph (4), specify the nature of the  
15 change, the reason for the change, when the change occurred, and how the unit's  
16 compliance status was determined subsequent to the change, including what method was  
17 used to determine emissions when a change mandated the need for monitor  
18 recertification.

19  
20 **[(6) A report on methods used to comply with the requirements of § 127.12a(k)**  
21 **(relating to compliance review). ]**

22  
23 **§ 145.31. The Department's action on compliance certifications.**

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(a) The Department or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO<sub>x</sub> Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) NO<sub>x</sub> allowances may be deducted from or transferred to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection (a).

**NO<sub>x</sub> ALLOWANCE ALLOCATIONS**

**§ 145.40. State trading program budget.**

**(a) IN ACCORDANCE WITH §§ 145.41 AND 145.42 (RELATING TO TIMING REQUIREMENTS FOR NO<sub>x</sub> ALLOWANCE ALLOCATIONS AND NO<sub>x</sub> ALLOWANCE ALLOCATIONS), THE DEPARTMENT WILL ALLOCATE TO NO<sub>x</sub> BUDGET UNITS UNDER § 145.4(a) (RELATING TO APPLICABILITY), FOR EACH CONTROL PERIOD SPECIFIED IN § 145.41, A TOTAL NUMBER OF NO<sub>x</sub> ALLOWANCES LESS THE SUM OF THE NO<sub>x</sub> EMISSION LIMITATIONS (IN TONS) FOR EACH UNIT EXEMPT UNDER S 145.4(b) THAT IS NOT ALLOCATED ALLOWANCES UNDER § 145.42(b) OR (c) FOR THE CONTROL PERIOD AND WHOSE NO<sub>x</sub> EMISSION LIMITATION (IN TONS OF NO<sub>x</sub>) IS NOT INCLUDED IN THE AMOUNT**

1 **CALCULATED UNDER § 145.42(d)(5)(ii)(B). THE PENNSYLVANIA NO<sub>x</sub> TRADING**

2 **PROGRAM BUDGET IS AS FOLLOWS:** [The trading program budget allocated by the

3 Department under § 145.42 (relating to NO<sub>x</sub> allowance allocations) for a control period will

4 equal the total number of tons of NO<sub>x</sub> emissions apportioned to the NO<sub>x</sub> budget units under

5 § 145.4 (relating to applicability) in this Commonwealth for the control period, as follows:]

6  
7 (1) The NO<sub>x</sub> budget for electric generating units under this subchapter is 47,224 [52,000]  
8 tons per season.

9  
10 (2) The NO<sub>x</sub> budget for nonelectric generating units under this subchapter is 3,619  
11 [5,600] tons per season.

12  
13 **(b) [(3)]** The NO<sub>x</sub> budget may be adjusted as provided in § [**§ 145.55(c)(10), 145.80–145.88**  
14 **and] 145.90 ([relating to banking; opt-in process; and] emission reduction credit provisions).**

15  
16 **§ 145.41. Timing requirements for NO<sub>x</sub> allowance allocations.**

17  
18 (a) The Department will submit to the NO<sub>x</sub> Allowance Tracking System the NO<sub>x</sub> allowance  
19 allocations, in accordance with § 145.42 (relating to NO<sub>x</sub> allowance allocations), for the control  
20 periods in 2003 **THROUGH 2007** [, 2004 and 2005].

1 **(b) BY APRIL 1, 2005, THE DEPARTMENT WILL PUBLISH THE NO<sub>x</sub> ALLOWANCE**  
2 **ALLOCATIONS IN THE PENNSYLVANIA BULLETIN, IN ACCORDANCE WITH §§**  
3 **145.42(a) THROUGH (c), FOR THE CONTROL PERIODS 2008 THROUGH 2012.**

4  
5 **(c) BY APRIL 1, 2010, BY APRIL 1 OF 2015, AND THEREAFTER BY APRIL 1 OF THE**  
6 **YEAR THAT IS 5 YEARS AFTER THE LAST YEAR FOR WHICH NO<sub>x</sub>**  
7 **ALLOWANCES ALLOCATIONS ARE DETERMINED, THE DEPARTMENT WILL**  
8 **PUBLISH THE NO<sub>x</sub> ALLOWANCE ALLOCATIONS IN THE PENNSYLVANIA**  
9 **BULLETIN, IN ACCORDANCE WITH §§ 145.42(a) THROUGH (c), FOR THE**  
10 **CONTROL PERIODS IN THE YEARS THAT ARE 3, 4, 5, 6, AND 7 YEARS AFTER**  
11 **THE APPLICABLE DEADLINE UNDER THIS SUBSECTION.**

12  
13 **(d) BY APRIL 1, 2003 AND APRIL 1 OF EACH YEAR THEREAFTER, THE**  
14 **DEPARTMENT WILL PUBLISH THE NO<sub>x</sub> ALLOWANCE ALLOCATIONS IN THE**  
15 **PENNSYLVANIA BULLETIN, IN ACCORDANCE WITH § 145.42(d), FOR THE**  
16 **CONTROL PERIOD IN THE YEAR OF THE APPLICABLE DEADLINE UNDER THIS**  
17 **SUBSECTION.**

18  
19 **[(b) By April 1, 2003, and April 1 of each year thereafter, the Department will submit to the**  
20 **NO<sub>x</sub> Allowance Tracking System the NO<sub>x</sub> allowance allocations, in accordance with §**  
21 **145.42, for the control period in the year that is 3 years after the year of the applicable**  
22 **deadline for submission under this subsection (b). If the Department fails to submit the**  
23 **NO<sub>x</sub> allowance allocations in accordance with this subsection, the same number of NO<sub>x</sub>**

1 allowances as were allocated for the preceding control period will be allocated for the  
2 control period.]

3

4 [(c) By April 1, 2004, and April 1 of each year thereafter, the Department will submit to the  
5 NO<sub>x</sub> Allowance Tracking System the NO<sub>x</sub> allowance allocations, in accordance with §  
6 145.42, for NO<sub>x</sub> allowances remaining in the allocation set-aside for the prior control  
7 period.]

8

9 § 145.42. NO<sub>x</sub> allowance allocations.

10

11 (a) Unit heat input shall be calculated as follows:

12

13 (1) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations for each  
14 NO<sub>x</sub> budget unit under § 145.4 (relating to applicability) will be as follows:

15

16 (i) FOR A NO<sub>x</sub> ALLOWANCE ALLOCATION UNDER § 145.41(a).

17

18 (A) FOR A UNIT UNDER § 145.4(a)(1), THE AVERAGE OF THE  
19 TWO HIGHEST AMOUNTS OF THE UNIT'S HEAT INPUT FOR  
20 THE CONTROL PERIODS IN 1995 THROUGH 1998; AND

21

22 (B) FOR A UNIT UNDER § 145.4(a)(2), THE CONTROL PERIOD  
23 IN 1995 OR, IF THE ADMINISTRATOR DETERMINES THAT

1 REASONABLY RELIABLE DATA ARE AVAILABLE FOR  
2 CONTROL PERIODS IN 1996 THROUGH 1998, THE AVERAGE  
3 OF THE TWO HIGHEST AMOUNTS OF THE UNIT'S HEAT  
4 INPUT FOR THE CONTROL PERIODS IN 1995 THROUGH 1998.

5  
6 (ii) FOR A NO<sub>x</sub> ALLOWANCE ALLOCATION UNDER § 145.41(b), THE  
7 UNIT'S AVERAGE HEAT INPUT FOR THE CONTROL PERIODS IN  
8 2002 THROUGH 2004.

9  
10 (iii) FOR A NO<sub>x</sub> ALLOWANCE ALLOCATION UNDER § 145.41(c), THE  
11 UNIT'S AVERAGE HEAT INPUT FOR THE CONTROL PERIOD IN THE  
12 YEARS THAT ARE 4, 5, 6, 7, AND 8 YEARS BEFORE THE FIRST YEAR  
13 FOR WHICH THE ALLOCATION IS BEING CALCULATED.

14  
15 (2) THE UNIT'S HEAT INPUT FOR THE CONTROL PERIOD IN EACH YEAR  
16 SPECIFIED UNDER PARAGRAPH (a)(1) OF THIS SECTION WILL BE  
17 DETERMINED IN ACCORDANCE WITH 40 CFR PART 75.  
18 NOTWITHSTANDING THE FIRST SENTENCE OF THIS PARAGRAPH (a)(2),  
19 THE FOLLOWING APPLY:

20  
21 (i) FOR A NO<sub>x</sub> ALLOWANCE ALLOCATION UNDER § 145.41(a), SUCH  
22 HEAT INPUT WILL BE DETERMINED USING THE BEST AVAILABLE  
23 DATA REPORTED TO THE ADMINISTRATOR FOR THE UNIT IF THE

1           UNIT WAS NOT OTHERWISE SUBJECT TO THE REQUIREMENTS OF  
2           40 CFR PART 75 FOR THE CONTROL PERIOD.

3  
4           (ii) FOR A NO<sub>x</sub> ALLOWANCE ALLOCATION UNDER § 145.41(b) OR (c)  
5           FOR A UNIT EXEMPT UNDER § 145.4(b), SUCH HEAT INPUT SHALL  
6           BE TREATED AS ZERO IF THE UNIT IS EXEMPT UNDER § 145.4(b)  
7           DURING THE CONTROL PERIOD.

8  
9           (b) FOR EACH GROUP OF FIVE CONTROL PERIODS SPECIFIED IN §§ 145.41(a)  
10          THROUGH (c), THE DEPARTMENT WILL ALLOCATE TO ALL NO<sub>x</sub> BUDGET  
11          UNITS IN A GIVEN STATE UNDER § 145.4(a)(1) THAT COMMENCED OPERATION  
12          BEFORE MAY 1, 1997 FOR ALLOCATIONS UNDER § 145.41(a), MAY 1, 2003 FOR  
13          ALLOCATIONS UNDER § 145.41(b), AND MAY 1 OF THE YEAR 5 YEARS BEFORE  
14          THE FIRST YEAR FOR WHICH THE ALLOCATION UNDER § 145.41(c) IS BEING  
15          CALCULATED, A TOTAL NUMBER OF NO<sub>x</sub> ALLOWANCES EQUAL TO 95  
16          PERCENT OF THE PORTION OF THE STATE'S TRADING PROGRAM BUDGET  
17          UNDER § 145.40 COVERING SUCH UNITS. THE DEPARTMENT WILL ALLOCATE  
18          IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

19  
20          (1) THE DEPARTMENT WILL ALLOCATE NO<sub>x</sub> ALLOWANCES TO EACH  
21          NO<sub>x</sub> BUDGET UNIT UNDER § 145.4(a)(1) FOR EACH CONTROL PERIOD IN  
22          AN AMOUNT EQUALING 0.15 LB/MMBTU MULTIPLIED BY THE HEAT  
23          INPUT DETERMINED UNDER PARAGRAPH (a) OF THIS SECTION, DIVIDED

1 BY 2,000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF  
2 NO<sub>x</sub> ALLOWANCES AS APPROPRIATE.

3  
4 (2) IF THE INITIAL TOTAL NUMBER OF NO<sub>x</sub> ALLOWANCES ALLOCATED  
5 TO ALL NO<sub>x</sub> BUDGET UNITS UNDER § 145.4(a)(1) IN THE STATE FOR A  
6 CONTROL PERIOD UNDER PARAGRAPH (b)(1) OF THIS SECTION DOES  
7 NOT EQUAL 95 PERCENT OF THE PORTION OF THE STATE'S TRADING  
8 PROGRAM BUDGET UNDER § 145.40 COVERING SUCH UNITS, THE  
9 DEPARTMENT WILL ADJUST THE TOTAL NUMBER OF NO<sub>x</sub>  
10 ALLOWANCES ALLOCATED TO ALL SUCH NO<sub>x</sub> BUDGET UNITS FOR THE  
11 CONTROL PERIOD UNDER PARAGRAPH (b)(1) OF THIS SECTION SO THAT  
12 THE TOTAL NUMBER OF NO<sub>x</sub> ALLOWANCES ALLOCATED EQUALS 95  
13 PERCENT OF SUCH PORTION OF THE STATE'S TRADING PROGRAM  
14 BUDGET. THIS ADJUSTMENT WILL BE MADE BY MULTIPLYING EACH  
15 UNIT'S ALLOCATION BY 95 PERCENT OF SUCH PORTION OF THE  
16 STATE'S TRADING PROGRAM BUDGET; DIVIDING BY THE TOTAL  
17 NUMBER OF NO<sub>x</sub> ALLOWANCES ALLOCATED UNDER PARAGRAPH (b)(1)  
18 OF THIS SECTION FOR THE CONTROL PERIOD; AND ROUNDED TO THE  
19 NEAREST WHOLE NUMBER OF NO<sub>x</sub> ALLOWANCES AS APPROPRIATE.

20  
21 (c) FOR EACH GROUP OF FIVE CONTROL PERIODS SPECIFIED IN §§ 145.41(a)  
22 THROUGH (c), THE DEPARTMENT WILL ALLOCATE TO ALL NO<sub>x</sub> BUDGET  
23 UNITS IN A GIVEN STATE UNDER § 145.4(a)(2) THAT COMMENCED OPERATION

1 BEFORE MAY 1, 1997 FOR ALLOCATIONS UNDER § 145.41(a), MAY 1, 2003 FOR  
2 ALLOCATIONS UNDER § 145.41(b), AND MAY 1 OF THE YEAR 5 YEARS BEFORE  
3 THE FIRST YEAR FOR WHICH THE ALLOCATION UNDER § 145.41(c) IS BEING  
4 CALCULATED, A TOTAL NUMBER OF NO<sub>x</sub> ALLOWANCES EQUAL TO 95  
5 PERCENT OF THE PORTION OF THE STATE'S TRADING PROGRAM BUDGET  
6 UNDER § 145.40 COVERING SUCH UNITS. THE DEPARTMENT WILL ALLOCATE  
7 IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

8  
9 (1) THE DEPARTMENT WILL ALLOCATE NO<sub>x</sub> ALLOWANCES TO EACH  
10 NO<sub>x</sub> BUDGET UNIT UNDER §145.4(a)(2) FOR EACH CONTROL PERIOD IN  
11 AN AMOUNT EQUALING 0.17 LB/MMBTU MULTIPLIED BY THE HEAT  
12 INPUT DETERMINED UNDER SUBSECTION (a) OF THIS SECTION,  
13 DIVIDED BY 2,000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE  
14 NUMBER OF NO<sub>x</sub> ALLOWANCES AS APPROPRIATE.

15  
16 (2) IF THE INITIAL TOTAL NUMBER OF NO<sub>x</sub> ALLOWANCES ALLOCATED  
17 TO ALL NO<sub>x</sub> BUDGET UNITS UNDER §145.4(a)(2) IN THE STATE FOR A  
18 CONTROL PERIOD UNDER PARAGRAPH (c)(1) OF THIS SECTION DOES  
19 NOT EQUAL 95 PERCENT OF THE PORTION OF THE STATE'S TRADING  
20 PROGRAM BUDGET UNDER § 145.40 COVERING SUCH UNITS, THE  
21 ADMINISTRATOR WILL ADJUST THE TOTAL NUMBER OF NO<sub>x</sub>  
22 ALLOWANCES ALLOCATED TO ALL SUCH NO<sub>x</sub> BUDGET UNITS FOR THE  
23 CONTROL PERIOD UNDER PARAGRAPH (a)(1) OF THIS SECTION SO THAT

1 THE TOTAL NUMBER OF NO<sub>x</sub> ALLOWANCES ALLOCATED EQUALS 95  
2 PERCENT OF THE PORTION OF THE STATE'S TRADING PROGRAM  
3 BUDGET UNDER § 145.40 COVERING SUCH UNITS. THIS ADJUSTMENT  
4 WILL BE MADE BY MULTIPLYING EACH UNIT'S ALLOCATION BY 95  
5 PERCENT OF THE PORTION OF THE STATE'S TRADING PROGRAM  
6 BUDGET UNDER § 145.40 COVERING SUCH UNITS; DIVIDING BY THE  
7 TOTAL NUMBER OF NO<sub>x</sub> ALLOWANCES ALLOCATED UNDER  
8 PARAGRAPH (c)(1) OF THIS SECTION FOR THE CONTROL PERIOD; AND  
9 ROUNDING TO THE NEAREST WHOLE NUMBER OF NO<sub>x</sub> ALLOWANCES  
10 AS APPROPRIATE.

11  
12 (d) FOR EACH CONTROL PERIOD SPECIFIED IN § 145.41(d), THE DEPARTMENT  
13 WILL ALLOCATE NO<sub>x</sub> ALLOWANCES TO NO<sub>x</sub> BUDGET UNITS IN A GIVEN  
14 STATE UNDER § 145.4(a) (EXCEPT FOR UNITS EXEMPT UNDER § 145.4(b)) THAT  
15 COMMENCE OPERATION, OR ARE PROJECTED TO COMMENCE OPERATION,  
16 ON OR AFTER MAY 1, 1997 (FOR CONTROL PERIODS UNDER § 145.41(a)); MAY 1,  
17 2003, (FOR CONTROL PERIODS UNDER § 145.41(b)); AND MAY 1 OF THE YEAR 5  
18 YEARS BEFORE THE BEGINNING OF THE GROUP OF 5 YEARS THAT INCLUDES  
19 THE CONTROL PERIOD (FOR CONTROL PERIODS UNDER § 145.41(c)). THE  
20 DEPARTMENT MAY ALSO USE THIS SET-ASIDE TO ADDRESS ALLOCATION  
21 REVISIONS TO UNITS UNDER SUBSECTIONS (a) THROUGH (c). THE  
22 DEPARTMENT WILL MAKE THE ALLOCATIONS UNDER THIS SUBSECTION (d)  
23 IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

1  
2 **(1) THE DEPARTMENT WILL ESTABLISH ONE ALLOCATION SET-ASIDE**  
3 **FOR EACH CONTROL PERIOD FOR EACH STATE. EACH ALLOCATION**  
4 **SET-ASIDE WILL BE ALLOCATED NO<sub>x</sub> ALLOWANCES EQUAL TO 5**  
5 **PERCENT OF THE TONS OF NO<sub>x</sub> EMISSION IN THE STATE'S TRADING**  
6 **PROGRAM BUDGET UNDER § 145.40, ROUNDED TO THE NEAREST**  
7 **WHOLE NUMBER OF NO<sub>x</sub> ALLOWANCES AS APPROPRIATE.**

8  
9 **(2) THE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE OF A NO<sub>x</sub>**  
10 **BUDGET UNIT SPECIFIED IN THIS SECTION MAY SUBMIT TO THE**  
11 **DEPARTMENT A REQUEST, IN A FORMAT SPECIFIED BY THE**  
12 **DEPARTMENT, TO BE ALLOCATED NO<sub>x</sub> ALLOWANCES FOR THE**  
13 **CONTROL PERIOD. THE NO<sub>x</sub> ALLOWANCE ALLOCATION REQUEST**  
14 **MUST BE RECEIVED BY THE DEPARTMENT ON OR AFTER THE DATE ON**  
15 **WHICH THE STATE PERMITTING AUTHORITY ISSUES A PERMIT TO**  
16 **CONSTRUCT THE UNIT AND BY JANUARY 1 BEFORE THE CONTROL**  
17 **PERIOD FOR WHICH NO<sub>x</sub> ALLOWANCES ARE REQUESTED.**

18  
19 **(3) IN A NO<sub>x</sub> ALLOWANCE ALLOCATION REQUEST UNDER PARAGRAPH**  
20 **(d)(2) OF THIS SECTION, THE NO<sub>x</sub> AUTHORIZED ACCOUNT**  
21 **REPRESENTATIVE FOR A NO<sub>x</sub> BUDGET UNIT UNDER § 145.4(a)(1) MAY**  
22 **REQUEST FOR THE CONTROL PERIOD NO<sub>x</sub> ALLOWANCES IN AN**  
23 **AMOUNT THAT DOES NOT EXCEED THE LESSER OF THE FOLLOWING:**

1  
2 **(i) 0.15 LB/MMBTU MULTIPLIED BY THE UNIT'S MAXIMUM DESIGN**  
3 **HEAT INPUT, MULTIPLIED BY THE LESSER OF 3,672 HOURS OR**  
4 **THE NUMBER OF HOURS REMAINING IN THE CONTROL PERIOD**  
5 **STARTING WITH THE DAY IN THE CONTROL PERIOD ON WHICH**  
6 **THE UNIT COMMENCES OPERATION OR IS PROJECTED TO**  
7 **COMMENCE OPERATION, DIVIDED BY 2,000 LB/TON, AND**  
8 **ROUNDED TO THE NEAREST WHOLE NUMBER OF NO<sub>x</sub>**  
9 **ALLOWANCES AS APPROPRIATE.**

10  
11 **(ii) THE UNIT'S MOST STRINGENT STATE OR FEDERAL NO<sub>x</sub>**  
12 **EMISSION LIMITATION MULTIPLIED BY THE UNIT'S MAXIMUM**  
13 **DESIGN HEAT INPUT, MULTIPLIED BY THE LESSER OF 3,672**  
14 **HOURS OR THE NUMBER OF HOURS REMAINING IN THE**  
15 **CONTROL PERIOD STARTING WITH THE DAY IN THE CONTROL**  
16 **PERIOD ON WHICH THE UNIT COMMENCES OPERATION OR IS**  
17 **PROJECTED TO COMMENCE OPERATION, DIVIDED BY 2,000**  
18 **LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF**  
19 **NO<sub>x</sub> ALLOWANCES AS APPROPRIATE.**

20  
21 **(4) IN A NO<sub>x</sub> ALLOWANCE ALLOCATION REQUEST UNDER PARAGRAPH**  
22 **(d)(2) OF THIS SECTION, THE NO<sub>x</sub> AUTHORIZED ACCOUNT**  
23 **REPRESENTATIVE FOR A NO<sub>x</sub> BUDGET UNIT UNDER § 145.4(a)(2) MAY**

1 **REQUEST FOR A CONTROL PERIOD NO<sub>x</sub> ALLOWANCES IN AN AMOUNT**  
2 **THAT DOES NOT EXCEED THE LESSER OF THE FOLLOWING:**

3  
4 **(i) 0.17 LB/MMBTU MULTIPLIED BY THE UNIT'S MAXIMUM DESIGN**  
5 **HEAT INPUT, MULTIPLIED BY THE LESSER OF 3,672 HOURS OR**  
6 **THE NUMBER OF HOURS REMAINING IN THE CONTROL PERIOD**  
7 **STARTING WITH THE DAY IN THE CONTROL PERIOD ON WHICH**  
8 **THE UNIT COMMENCES OPERATION OR IS PROJECTED TO**  
9 **COMMENCE OPERATION, DIVIDED BY 2,000 LB/TON, AND**  
10 **ROUNDED TO THE NEAREST WHOLE NUMBER OF NO<sub>x</sub>**  
11 **ALLOWANCES AS APPROPRIATE.**

12  
13 **(ii) THE UNIT'S MOST STRINGENT STATE OR FEDERAL NO<sub>x</sub>**  
14 **EMISSION LIMITATION MULTIPLIED BY THE UNIT'S MAXIMUM**  
15 **DESIGN HEAT INPUT, MULTIPLIED BY THE LESSER OF 3,672**  
16 **HOURS OR THE NUMBER OF HOURS REMAINING IN THE**  
17 **CONTROL PERIOD STARTING WITH THE DAY IN THE CONTROL**  
18 **PERIOD ON WHICH THE UNIT COMMENCES OPERATION OR IS**  
19 **PROJECTED TO COMMENCE OPERATION, DIVIDED BY 2,000**  
20 **LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF**  
21 **NO<sub>x</sub> ALLOWANCES AS APPROPRIATE.**  
22

1 **(5) THE DEPARTMENT WILL REVIEW EACH NO<sub>x</sub> ALLOWANCE**  
2 **ALLOCATION REQUEST SUBMITTED IN ACCORDANCE WITH**  
3 **PARAGRAPH (d)(2) OF THIS SECTION AND WILL ALLOCATE NO<sub>x</sub>**  
4 **ALLOWANCES PURSUANT TO SUCH REQUEST AS FOLLOWS:**

5  
6 **(i) UPON RECEIPT OF THE NO<sub>x</sub> ALLOWANCE ALLOCATION**  
7 **REQUEST, THE DEPARTMENT WILL MAKE ANY NECESSARY**  
8 **ADJUSTMENTS TO THE REQUEST TO ENSURE THAT THE**  
9 **REQUIREMENTS OF PARAGRAPHS (d), (d)(2), (d)(3), AND (d)(4) ARE**  
10 **MET.**

11  
12 **(ii) THE DEPARTMENT WILL DETERMINE THE FOLLOWING**  
13 **AMOUNTS:**

14  
15 **(A) THE SUM OF THE NO<sub>x</sub> ALLOWANCES REQUESTED (AS**  
16 **ADJUSTED UNDER PARAGRAPH (d)(5)(i) OF THIS SECTION)**  
17 **IN ALL NO<sub>x</sub> ALLOWANCE ALLOCATION REQUESTS UNDER**  
18 **PARAGRAPH (d)(2) OF THIS SECTION FOR THE CONTROL**  
19 **PERIOD; AND**

20  
21 **(B) FOR UNITS EXEMPT UNDER § 145.4(b) IN THE STATE**  
22 **THAT COMMENCED OPERATION, OR ARE PROJECTED TO**  
23 **COMMENCE OPERATION, ON OR AFTER MAY 1, 1997 (FOR**

1                   **CONTROL PERIODS UNDER § 145.41(a); MAY 1, 2003, (FOR**  
2                   **CONTROL PERIODS UNDER § 145.41(b)); AND MAY 1 OF THE**  
3                   **YEAR 5 YEARS BEFORE BEGINNING OF THE GROUP OF 5**  
4                   **YEARS THAT INCLUDES THE CONTROL PERIOD (FOR**  
5                   **CONTROL PERIODS UNDER § 145.41(c)), THE SUM OF THE NO<sub>x</sub>**  
6                   **EMISSION LIMITATIONS (IN TONS OF NO<sub>x</sub>) ON WHICH EACH**  
7                   **UNIT'S EXEMPTION UNDER § 145.4(b) IS BASED.**

8  
9                   **(iii) IF THE NUMBER OF NO<sub>x</sub> ALLOWANCES IN THE ALLOCATION**  
10                  **SET-ASIDE FOR THE CONTROL PERIOD LESS THE AMOUNT**  
11                  **UNDER PARAGRAPH (d)(5)(ii)(B) OF THIS SUBSECTION IS NOT LESS**  
12                  **THAN THE AMOUNT DETERMINED UNDER PARAGRAPH (d)(5)(ii)(A)**  
13                  **OF THIS SECTION, THE DEPARTMENT WILL ALLOCATE THE**  
14                  **AMOUNT OF THE NO<sub>x</sub> ALLOWANCES REQUESTED (AS ADJUSTED**  
15                  **UNDER PARAGRAPH (d)(5)(i) OF THIS SECTION) TO THE NO<sub>x</sub>**  
16                  **BUDGET UNIT FOR WHICH THE ALLOCATION REQUEST WAS**  
17                  **SUBMITTED.**

18  
19                  **(iv) IF THE NUMBER OF NO<sub>x</sub> ALLOWANCES IN THE ALLOCATION**  
20                  **SET-ASIDE FOR THE CONTROL PERIOD LESS THE AMOUNT**  
21                  **UNDER PARAGRAPH (d)(5)(ii)(B) OF THIS SUBSECTION IS LESS**  
22                  **THAN THE AMOUNT DETERMINED UNDER PARAGRAPH (d)(5)(ii)(A)**  
23                  **OF THIS SECTION, THE DEPARTMENT WILL ALLOCATE, TO THE**

1 NO<sub>x</sub> BUDGET UNIT FOR WHICH THE ALLOCATION REQUEST WAS  
2 SUBMITTED, THE AMOUNT OF NO<sub>x</sub> ALLOWANCES REQUESTED (AS  
3 ADJUSTED UNDER PARAGRAPH (d)(5)(i) OF THIS SECTION)  
4 MULTIPLIED BY THE NUMBER OF NO<sub>x</sub> ALLOWANCES IN THE  
5 ALLOCATION SET-ASIDE FOR THE CONTROL PERIOD LESS THE  
6 AMOUNT DETERMINED UNDER PARAGRAPH (d)(5)(ii)(B) OF THIS  
7 SECTION, DIVIDED BY THE AMOUNT DETERMINED UNDER  
8 PARAGRAPH (d)(5)(ii)(A) OF THIS SECTION, AND ROUNDED TO THE  
9 NEAREST WHOLE NUMBER OF NO<sub>x</sub> ALLOWANCES AS  
10 APPROPRIATE.

11  
12 (e) BEGINNING IN THE 2008 CONTROL PERIOD, A NO<sub>x</sub> BUDGET UNIT  
13 IDENTIFIED IN SUBSECTION (d) MAY, UPON REQUEST TO THE DEPARTMENT,  
14 RECEIVE ALLOCATIONS CALCULATED UNDER PARAGRAPHS (b) AND (c). IN  
15 ORDER FOR THE DEPARTMENT TO GRANT THE REQUEST, THE NO<sub>x</sub> BUDGET  
16 UNIT MUST HAVE AT LEAST ONE COMPLETE CONTROL PERIOD OF HEAT  
17 INPUT DATA MEASURED AS SPECIFIED IN SECTIONS 145.70 THROUGH 145.75.  
18 IF HEAT INPUT DATA IS AVAILABLE FROM MORE THAN ONE CONTROL  
19 PERIOD BUT LESS THAN THE NUMBER OF CONTROL PERIODS SPECIFIED IN  
20 SUBSECTIONS (a)(1)(ii) OR (iii), THE DATA WILL BE AVERAGED BASED ON THE  
21 NUMBER OF AVAILABLE CONTROL PERIODS.

1 **(f) THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL TAKE THE FOLLOWING ACTION**  
2 **FOR SOURCES THAT ARE ALLOCATED NO<sub>x</sub> ALLOWANCES UNDER**  
3 **PARAGRAPH (d) OF THIS SECTION:**

4  
5 **(1) THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL DEDUCT NO<sub>x</sub>**  
6 **ALLOWANCES UNDER § 145.54(b), (e), OR (f) TO ACCOUNT FOR THE**  
7 **ACTUAL HEAT INPUT OF THE UNIT DURING THE CONTROL PERIOD.**  
8 **THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL CALCULATE THE NUMBER OF**  
9 **NO<sub>x</sub> ALLOWANCES TO BE DEDUCTED TO ACCOUNT FOR THE UNIT'S**  
10 **ACTUAL HEAT INPUT USING THE FOLLOWING FORMULAS AND**  
11 **ROUNDING TO THE NEAREST WHOLE NUMBER OF NO<sub>x</sub> ALLOWANCE AS**  
12 **APPROPRIATE, PROVIDED THAT THE NUMBER OF NO<sub>x</sub> ALLOWANCES**  
13 **TO BE DEDUCTED SHALL BE ZERO IF THE NUMBER CALCULATED IS**  
14 **LESS THAN ZERO:**

15  
16 **NO<sub>x</sub> ALLOWANCES DEDUCTED FOR ACTUAL HEAT INPUT FOR A**  
17 **UNIT UNDER §145.4(a)(1) = UNIT'S NO<sub>x</sub> ALLOWANCES ALLOCATED**  
18 **FOR CONTROL PERIOD - (UNIT'S ACTUAL CONTROL PERIOD**  
19 **HEAT INPUT X UNIT'S EMISSION RATE X 2,000 LB/TON); AND**

20  
21 **NO<sub>x</sub> ALLOWANCES DEDUCTED FOR ACTUAL HEAT INPUT FOR A**  
22 **UNIT UNDER §145.4(a)(2) = UNIT'S NO<sub>x</sub> ALLOWANCES ALLOCATED**

1 FOR CONTROL PERIOD - (UNIT'S ACTUAL CONTROL PERIOD  
2 HEAT INPUT X UNIT'S EMISSION RATE X 2,000 LB/TON)

3  
4 WHERE:

5  
6 "UNIT'S NO<sub>x</sub> ALLOWANCES ALLOCATED FOR CONTROL PERIOD"  
7 IS THE NUMBER OF NO<sub>x</sub> ALLOWANCES ALLOCATED TO THE UNIT  
8 FOR THE CONTROL PERIOD UNDER PARAGRAPH (d) OF THIS  
9 SECTION; AND

10  
11 "UNIT'S ACTUAL CONTROL PERIOD HEAT INPUT" IS THE HEAT  
12 INPUT (IN MMBTU) OF THE UNIT DURING THE CONTROL PERIOD.

13  
14 "UNIT'S EMISSION RATE" IS THE EMISSION RATE IN LB/MMBTU  
15 FOR THE UNIT AS DETERMINED UNDER PARAGRAPHS (3) AND (4).

16  
17 (2) THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL TRANSFER ANY NO<sub>x</sub>  
18 ALLOWANCES DEDUCTED UNDER PARAGRAPH (c)(1) OF THIS SECTION  
19 TO THE ALLOCATION SET-ASIDE FOR THE CONTROL PERIOD FOR  
20 WHICH THEY WERE ALLOCATED.

21  
22 (g) AFTER MAKING THE DEDUCTIONS FOR COMPLIANCE UNDER § 145.54(b), (e),  
23 OR (f) FOR A CONTROL PERIOD, THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL

1 DETERMINE WHETHER ANY NO<sub>x</sub> ALLOWANCES REMAIN IN THE ALLOCATION  
2 SET-ASIDE FOR THE CONTROL PERIOD. THE NO<sub>x</sub> BUDGET ADMINISTRATOR  
3 WILL ALLOCATE ANY SUCH NO<sub>x</sub> ALLOWANCES TO THE NO<sub>x</sub> BUDGET UNITS IN  
4 THE STATE USING THE FOLLOWING FORMULA AND ROUNDING TO THE  
5 NEAREST WHOLE NUMBER OF NO<sub>x</sub> ALLOWANCES AS APPROPRIATE:

6  
7 UNIT'S SHARE OF NO<sub>x</sub> ALLOWANCES REMAINING IN ALLOCATION SET-  
8 ASIDE = TOTAL NO<sub>x</sub> ALLOWANCES REMAINING IN ALLOCATION SET-  
9 ASIDE X (UNIT'S NO<sub>x</sub> ALLOWANCE ALLOCATION ÷ STATE'S TRADING  
10 PROGRAM BUDGET EXCLUDING ALLOCATION SET-ASIDE)

11  
12 WHERE:

13  
14 "TOTAL NO<sub>x</sub> ALLOWANCES REMAINING IN ALLOCATION SET-ASIDE" IS  
15 THE TOTAL NUMBER OF NO<sub>x</sub> ALLOWANCES REMAINING IN THE  
16 ALLOCATION SET-ASIDE FOR THE CONTROL PERIOD;

17  
18 "UNIT'S NO<sub>x</sub> ALLOWANCE ALLOCATION" IS THE NUMBER OF NO<sub>x</sub>  
19 ALLOWANCES ALLOCATED UNDER PARAGRAPH (b) OR (c) OF THIS  
20 SECTION TO THE UNIT FOR THE CONTROL PERIOD TO WHICH THE  
21 ALLOCATION SET-ASIDE APPLIES; AND

1 "STATE'S TRADING PROGRAM BUDGET EXCLUDING ALLOCATION  
2 SET-ASIDE" IS THE STATE'S TRADING PROGRAM BUDGET UNDER §  
3 145.40 FOR THE CONTROL PERIOD TO WHICH THE ALLOCATION  
4 SET-ASIDE APPLIES MULTIPLIED BY 95 PERCENT, ROUNDED TO THE  
5 NEAREST WHOLE NUMBER OF NO<sub>x</sub> ALLOWANCES AS APPROPRIATE.

6  
7 (h) IF THE DEPARTMENT DETERMINES THAT NO<sub>x</sub> ALLOWANCES WERE  
8 ALLOCATED UNDER PARAGRAPH (b), (c), OR (d) OF THIS SECTION FOR A  
9 CONTROL PERIOD AND THE RECIPIENT OF THE ALLOCATION IS NOT  
10 ACTUALLY A NO<sub>x</sub> BUDGET UNIT UNDER § 145.4(a), THE DEPARTMENT WILL  
11 NOTIFY THE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE AND THEN WILL  
12 ACT IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

13  
14 (1) THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL NOT RECORD SUCH NO<sub>x</sub>  
15 ALLOWANCES FOR THE CONTROL PERIOD IN AN ACCOUNT UNDER §  
16 145.53.

17  
18 (i) IF THE NO<sub>x</sub> BUDGET ADMINISTRATOR ALREADY RECORDED  
19 SUCH NO<sub>x</sub> ALLOWANCES FOR THE CONTROL PERIOD IN AN  
20 ACCOUNT UNDER § 145.53 AND IF THE NO<sub>x</sub> BUDGET  
21 ADMINISTRATOR MAKES SUCH DETERMINATION BEFORE  
22 MAKING ALL DEDUCTIONS PURSUANT TO § 145.54 (EXCEPT  
23 DEDUCTIONS PURSUANT TO § 145.54(d)(2)) FOR THE CONTROL

1 PERIOD, THEN THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL DEDUCT  
2 FROM THE ACCOUNT NO<sub>x</sub> ALLOWANCES EQUAL IN NUMBER TO  
3 AND ALLOCATED FOR THE SAME OR A PRIOR CONTROL PERIOD  
4 AS THE NO<sub>x</sub> ALLOWANCES ALLOCATED TO SUCH RECIPIENT FOR  
5 THE CONTROL PERIOD. THE NO<sub>x</sub> AUTHORIZED ACCOUNT  
6 REPRESENTATIVE SHALL ENSURE THAT THE ACCOUNT  
7 CONTAINS THE NO<sub>x</sub> ALLOWANCES NECESSARY FOR  
8 COMPLETION OF SUCH DEDUCTION. IF THE ACCOUNT DOES NOT  
9 CONTAIN THE NECESSARY NO<sub>x</sub> ALLOWANCES, THE NO<sub>x</sub> BUDGET  
10 ADMINISTRATOR WILL DEDUCT THE REQUIRED NUMBER OF NO<sub>x</sub>  
11 ALLOWANCES, REGARDLESS OF THE CONTROL PERIOD FOR  
12 WHICH THEY WERE ALLOCATED, WHENEVER NO<sub>x</sub> ALLOWANCES  
13 ARE RECORDED IN THE ACCOUNT.

14  
15 (ii) IF THE NO<sub>x</sub> BUDGET ADMINISTRATOR ALREADY RECORDED  
16 SUCH NO<sub>x</sub> ALLOWANCES FOR THE CONTROL PERIOD IN AN  
17 ACCOUNT UNDER § 145.53 AND IF THE NO<sub>x</sub> BUDGET  
18 ADMINISTRATOR MAKES SUCH DETERMINATION AFTER MAKING  
19 ALL DEDUCTIONS PURSUANT TO § 145.54 (EXCEPT DEDUCTIONS  
20 PURSUANT TO § 145.54(d)(2)) FOR THE CONTROL PERIOD, THEN  
21 THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL APPLY PARAGRAPH  
22 (g)(1)(i) OF THIS SECTION TO ANY SUBSEQUENT CONTROL PERIOD

1                   **FOR WHICH NO<sub>x</sub> ALLOWANCES WERE ALLOCATED TO SUCH**  
2                   **RECIPIENT.**

3  
4                   **(2) THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL TRANSFER THE NO<sub>x</sub>**  
5                   **ALLOWANCES THAT ARE NOT RECORDED, OR THAT ARE DEDUCTED,**  
6                   **PURSUANT TO PARAGRAPH (g)(1) OF THIS SECTION TO AN ALLOCATION**  
7                   **SET-ASIDE FOR THE STATE IN WHICH SUCH SOURCE IS LOCATED.**

8  
9                   **[(i) For an NO<sub>x</sub> allowance allocation under § 145.41(a) (relating to timing**  
10                   **requirements for NO<sub>x</sub> allowance allocations), the average of the two highest**  
11                   **amounts of the unit's heat input for the control periods in 1995, 1996 and**  
12                   **1997 if the unit is under § 145.4(1) or the control period in 1995 if the unit is**  
13                   **under § 145.4(2).**

14  
15                   **(ii) For an NO<sub>x</sub> allowance allocation under § 145.41(b), the unit's heat input**  
16                   **for the control period in the year that is 4 years before the year for which the**  
17                   **NO<sub>x</sub> allocation is being calculated.**

18  
19                   **(2) The unit's total heat input for the control period in each year specified under**  
20                   **paragraph (1) will be determined in accordance with 40 CFR Part 75 (relating to**  
21                   **continuous emission monitoring) if the NO<sub>x</sub> budget unit was otherwise subject to 40**  
22                   **CFR Part 75 for the year, or will be based on the best available data reported to the**  
23                   **Department for the unit if the unit was not otherwise subject to 40 CFR Part 75 for**

1           **the year. The best available data will be determined in the following order:**  
2           **emission statements submitted as required by § 135.21 (relating to emission**  
3           **statements), data collected by continuous emission monitors required by Chapter**  
4           **139 (relating to sampling and testing), data submitted to the Department as**  
5           **required under § 135.3 (relating to reporting), data from multiple stack or fuel tests,**  
6           **data from a single stack or fuel test.]**

7  
8           **[(b) For each control period under § 145.41 (relating to timing requirements for NO<sub>x</sub>**  
9           **allowance allocations), the Department will allocate to all NO<sub>x</sub> budget units under §**  
10           **145.4(1) in the State that commenced operation before May 1 of the period used to**  
11           **calculate heat input under paragraph (1), a total number of NO<sub>x</sub> allowances equal to 95 %**  
12           **in 2003, 2004 and 2005, or 98% thereafter, of the tons of NO<sub>x</sub> emissions in the State trading**  
13           **program budget apportioned to electric generating units under § 145.40 (relating to State**  
14           **trading program budget) in accordance with the following procedures:**

15  
16           **(1) The Department will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> budget unit under §**  
17           **145.4(1) in an amount equaling 0.15 lb/mmBtu or allowable emission level,**  
18           **whichever is lower, multiplied by the heat input determined under subsection (a),**  
19           **rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.**

20  
21           **(2) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> budget units**  
22           **under § 145.4(1) in this Commonwealth for a control period under paragraph (1)**  
23           **does not equal 95 % in 2003, 2004 and 2005, or 98% thereafter, of the number of**

1           **tons of NO<sub>x</sub> emissions in the Pennsylvania trading program budget apportioned to**  
2           **electric generating units, the Department will adjust the total number of NO<sub>x</sub>**  
3           **allowances allocated to all of the NO<sub>x</sub> budget units for the control period under**  
4           **paragraph (1) so that the total number of NO<sub>x</sub> allowances allocated equals 95 % in**  
5           **2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO<sub>x</sub> emissions in**  
6           **the Pennsylvania trading program budget apportioned to electric generating units.**  
7           **This adjustment will be made by: multiplying each unit's allocation by 95 % in**  
8           **2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO<sub>x</sub> emissions in**  
9           **the Pennsylvania trading program budget apportioned to electric generating units**  
10           **divided by the total number of NO<sub>x</sub> allowances allocated under paragraph (1), and**  
11           **rounding to the nearest whole NO<sub>x</sub> allowance as appropriate. ]**

12  
13           **[(c) For each control period under § 145.41, the Department will allocate to all NO<sub>x</sub> budget**  
14           **units under § 145.4(2) in this Commonwealth that commenced operation before May 1 of**  
15           **the period used to calculate heat input under subsection (a), a total number of NO<sub>x</sub>**  
16           **allowances equal to 95 % in 2003, 2004 and 2005, or 98% thereafter, of the tons of NO<sub>x</sub>**  
17           **emissions in the Pennsylvania trading program budget apportioned to nonelectric**  
18           **generating units under § 145.40 in accordance with the following procedures:**

19  
20           **(1) The Department will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> budget unit under §**  
21           **145.4(2) in an amount equaling 0.17 lb/mmBtu or allowable emission level,**  
22           **whichever is lower, multiplied by the heat input determined under subsection (a),**  
23           **rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.**

1  
2 **(2) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> budget units**  
3 **under § 145.4(2) in this Commonwealth for a control period under paragraph (1)**  
4 **does not equal 95 % in 2003, 2004 and 2005, or 98% thereafter, of the number of**  
5 **tons of NO<sub>x</sub> emissions in the Pennsylvania trading program budget apportioned to**  
6 **nonelectric generating units, the Department will adjust the total number of NO<sub>x</sub>**  
7 **allowances allocated to all of the NO<sub>x</sub> budget units for the control period under**  
8 **paragraph (1) so that the total number of NO<sub>x</sub> allowances allocated equals 95 % in**  
9 **2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO<sub>x</sub> emissions in**  
10 **the Pennsylvania trading program budget apportioned to nonelectric generating**  
11 **units. This adjustment will be made by multiplying each unit's allocation by 95 % in**  
12 **2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO<sub>x</sub> emissions in**  
13 **the Pennsylvania trading program budget apportioned to nonelectric generating**  
14 **units divided by the total number of NO<sub>x</sub> allowances allocated under paragraph (1),**  
15 **and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate. ]**  
16

17 **[(d) For each control period under § 145.41, the Department will allocate NO<sub>x</sub> allowances to**  
18 **NO<sub>x</sub> budget units under § 145.4 in this Commonwealth that commenced operation, or are**  
19 **projected to commence operation, on or after May 1 of the period used to calculate heat**  
20 **input under subsection (a)(1), in accordance with the following procedures:**  
21

22 **(1) The Department will establish one allocation set-aside for each control period.**  
23 **Each allocation set-aside will be allocated NO<sub>x</sub> allowances equal to 5% in 2003, 2004**

1           **and 2005, or 2% thereafter, of the tons of NO<sub>x</sub> emissions in the Pennsylvania trading**  
2           **program budget under § 145.40, rounded to the nearest whole NO<sub>x</sub> allowance as**  
3           **appropriate.**

4  
5           **(2) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit under this**  
6           **subsection may submit to the Department a request , as part of a plan approval**  
7           **application under Chapter 127, Subchapter B (relating to plan approval**  
8           **requirements), to be allocated NO<sub>x</sub> allowances for no more than five consecutive**  
9           **control periods under § 145.41, starting with the control period during which the**  
10          **NO<sub>x</sub> budget unit commenced, or is projected to commence, operation and ending**  
11          **with the control period preceding the control period for which it will receive an**  
12          **allocation under subsection (b) or (c). NO<sub>x</sub> budget affected units that have been**  
13          **issued their plan approvals as of the effective date of this subchapter may submit a**  
14          **request for allowances prior to May 1 of the first control period for which the NO<sub>x</sub>**  
15          **allowance allocation is requested and after the date on which the Department**  
16          **approves a plan approval for the NO<sub>x</sub> budget unit under Chapter 127 (relating to**  
17          **construction, modification, reactivation and operation of sources).**

18  
19          **(3) In a NO<sub>x</sub> allowance allocation request under paragraph (2), the NO<sub>x</sub> authorized**  
20          **account representative for units under § 145.4(1) may request for a control period**  
21          **NO<sub>x</sub> allowances in an amount that does not exceed 0.15 lb/mmBtu or allowable**  
22          **emission rate, whichever is less, multiplied by the NO<sub>x</sub> budget unit's maximum**  
23          **design heat input (in mmBtu/hr) multiplied by the number of hours remaining in**

1           **the control period starting with the first day in the control period on which the unit**  
2           **operated or is projected to operate.**

3  
4           **(4) In a NO<sub>x</sub> allowance allocation request under paragraph (2), the NO<sub>x</sub> authorized**  
5           **account representative for units under § 145.4(2) may request for a control period**  
6           **NO<sub>x</sub> allowance in an amount that does not exceed 0.17 lb/mmBtu or allowable**  
7           **emission rate, whichever is less, multiplied by the NO<sub>x</sub> budget unit's maximum**  
8           **design heat input (in mmBtu/hr) multiplied by the number of hours remaining in**  
9           **the control period starting with the first day in the control period on which the unit**  
10           **operated or is projected to operate.**

11  
12           **(5) The Department will review and allocate NO<sub>x</sub> allowances under each NO<sub>x</sub>**  
13           **allowance allocation request under paragraph (2) in the order that plan approval is**  
14           **issued.**

15  
16                   **(i) Upon receipt of the NO<sub>x</sub> allowance allocation request, the Department will**  
17                   **determine whether, and will make any necessary adjustments to the request**  
18                   **to ensure that, for units under § 145.4(1), the control period and the number**  
19                   **of allowances specified are consistent with paragraphs (2) and (3) and, for**  
20                   **units under § 145.4(2), the control period and the number of allowances**  
21                   **specified are consistent with paragraphs (2) and (4).**

22  
23                   **(ii) If the allocation set-aside for the control period for which NO<sub>x</sub> allowances**

1           **are requested has an amount of NO<sub>x</sub> allowances not less than the number**  
2           **requested (as adjusted under subparagraph (i)), the Department will allocate**  
3           **the amount of the NO<sub>x</sub> allowances requested (as adjusted under**  
4           **subparagraph (i)) to the NO<sub>x</sub> budget unit upon issuance of the plan approval**  
5           **under Chapter 127.**

6  
7           **(iii) If the allocation set-aside for the control period for which NO<sub>x</sub>**  
8           **allowances are requested has a smaller amount of NO<sub>x</sub> allowances than the**  
9           **number requested (as adjusted under subparagraph (i)), the Department will**  
10          **deny in part the request and allocate only the remaining number of NO<sub>x</sub>**  
11          **allowances in the allocation set-aside to the NO<sub>x</sub> budget unit.**

12  
13          **(iv) Once an allocation set-aside for a control period has been depleted of all**  
14          **NO<sub>x</sub> allowances, the Department will deny, and will not allocate any NO<sub>x</sub>**  
15          **allowances under, any NO<sub>x</sub> allowance allocation request under which NO<sub>x</sub>**  
16          **allowances have not already been allocated for the control period.]**

17  
18          **[(e) For an NO<sub>x</sub> budget unit that is allocated NO<sub>x</sub> allowances under subsection (d) for a**  
19          **control period, NO<sub>x</sub> allowances will be deducted under § 145.54(b) or (e) (relating to**  
20          **compliance) to account for the actual utilization of the unit during the control period. The**  
21          **number of NO<sub>x</sub> allowances will be calculated to be deducted to account for the unit's actual**  
22          **utilization using the following formulas and rounding to the nearest whole NO<sub>x</sub> allowance**  
23          **as appropriate, provided that the number of NO<sub>x</sub> allowances to be deducted shall be zero if**

1 **the number calculated is less than zero:**

2

3 **NO<sub>x</sub> allowances deducted for actual utilization for units under § 145.4(1) = (Unit's**  
4 **NO<sub>x</sub> allowances allocated for control period) - (Unit's actual control period**  
5 **utilization x 0.15 lb/mmBtu or allowable emission rate, whichever is less).**

6

7 **NO<sub>x</sub> allowances deducted for actual utilization for units under § 145.4(2) = (Unit's**  
8 **NO<sub>x</sub> allowances allocated for control period) - (Unit's actual control period**  
9 **utilization x 0.17 lb/mmBtu or allowable emission rate, whichever is less).**

10

11 **Where "Unit's NO<sub>x</sub> allowances allocated for control period" is the number of NO<sub>x</sub>**  
12 **allowances allocated to the unit for the control period under subsection (d) and**  
13 **"Unit's actual control period utilization" is the utilization (in mmBtu), as defined in**  
14 **§ 145.2, of the unit during the control period.]**

15

16 **[(f) After making the deductions for compliance under § 145.54(b) or (e) for a control**  
17 **period, the Department will allocate any remaining NO<sub>x</sub> allowances to the NO<sub>x</sub> budget**  
18 **units using the following formula and rounding to the nearest whole NO<sub>x</sub> allowance as**  
19 **appropriate:**

20

21 **Unit's share of NO<sub>x</sub> allowances remaining in allocation set-aside = Total NO<sub>x</sub>**  
22 **allowances remaining in allocation set-aside x (Unit's NO<sub>x</sub> allowance allocation ÷**  
23 **( State trading program budget excluding allocation set-aside )**

1  
2  
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4  
5  
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12  
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21  
22

*Where:*

**"Total NO<sub>x</sub> allowances remaining in allocation set-aside" is the total number of NO<sub>x</sub> allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies.**

**"Unit's NO<sub>x</sub> allowance allocation" is the number of NO<sub>x</sub> allowances allocated under subsection (b) or (c) to the unit for the control period to which the allocation set-aside applies.**

**"State trading program budget excluding allocation set-aside" is the Pennsylvania trading program budget under § 145.40 for the control period to which the allocation set-aside applies multiplied by 95 % if the control period is in 2003, 2004 or 2005 or 98 % if the control period is in any year thereafter, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.]**

**(i) THE DEPARTMENT WILL PUBLISH FOR COMMENT A LIST OF THE ALLOCATIONS IN THE PENNSYLVANIA BULLETIN.**

**§ 145.43 COMPLIANCE SUPPLEMENT POOL.**

1 **(a) FOR ANY NO<sub>x</sub> BUDGET UNIT THAT REDUCES ITS NO<sub>x</sub> EMISSION RATE IN**  
2 **THE 2001 OR 2002 CONTROL PERIOD, THE OWNERS AND OPERATORS MAY**  
3 **REQUEST EARLY REDUCTION CREDITS IN ACCORDANCE WITH THE**  
4 **FOLLOWING REQUIREMENTS:**

5  
6 **(1) EACH NO<sub>x</sub> BUDGET UNIT FOR WHICH THE OWNERS AND OPERATORS**  
7 **INTEND TO REQUEST, OR REQUEST, ANY EARLY REDUCTION CREDITS**  
8 **IN ACCORDANCE WITH PARAGRAPH (a)(4) OF THIS SECTION SHALL**  
9 **MONITOR AND REPORT NO<sub>x</sub> EMISSIONS IN ACCORDANCE WITH THIS**  
10 **SUBCHAPTER STARTING IN THE 2000 CONTROL PERIOD AND FOR EACH**  
11 **CONTROL PERIOD FOR WHICH SUCH EARLY REDUCTION CREDITS ARE**  
12 **REQUESTED. THE UNIT'S PERCENT MONITOR DATA AVAILABILITY**  
13 **SHALL NOT BE LESS THAN 90 PERCENT DURING THE 2000 CONTROL**  
14 **PERIOD, AND THE UNIT MUST BE IN COMPLIANCE WITH ANY**  
15 **APPLICABLE STATE OR FEDERAL NO<sub>x</sub> EMISSION CONTROL**  
16 **REQUIREMENTS DURING 2000 THROUGH 2002.**

17  
18 **(2) NO<sub>x</sub> EMISSION RATE AND HEAT INPUT UNDER PARAGRAPHS (a)(3)**  
19 **AND (4) OF THIS SECTION SHALL BE DETERMINED IN ACCORDANCE**  
20 **WITH THIS SUBCHAPTER.**

21  
22 **(3) EACH NO<sub>x</sub> BUDGET UNIT FOR WHICH THE OWNERS AND OPERATORS**  
23 **INTEND TO REQUEST, OR REQUEST, ANY EARLY REDUCTION CREDITS**

1 UNDER PARAGRAPH (a)(4) OF THIS SECTION SHALL REDUCE ITS NO<sub>x</sub>  
2 EMISSION RATE, FOR EACH CONTROL PERIOD FOR WHICH EARLY  
3 REDUCTION CREDITS ARE REQUESTED, TO LESS THAN BOTH 0.25  
4 LB/MMBTU AND 80 PERCENT OF THE UNIT'S NO<sub>x</sub> EMISSION RATE IN THE  
5 2000 CONTROL PERIOD.

6  
7 (4) THE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE OF A NO<sub>x</sub>  
8 BUDGET UNIT THAT MEETS THE REQUIREMENTS OF PARAGRAPHS  
9 (a)(1)AND (3) OF THIS SECTION MAY SUBMIT TO THE DEPARTMENT A  
10 REQUEST FOR EARLY REDUCTION CREDITS FOR THE UNIT BASED ON  
11 NO<sub>x</sub> EMISSION RATE REDUCTIONS MADE BY THE UNIT IN THE  
12 CONTROL PERIOD FOR 2001 OR 2002.

13  
14 (i) IN THE EARLY REDUCTION CREDIT REQUEST, THE NO<sub>x</sub>  
15 AUTHORIZED ACCOUNT REPRESENTATIVE MAY REQUEST EARLY  
16 REDUCTION CREDITS FOR SUCH CONTROL PERIOD IN AN  
17 AMOUNT EQUAL TO THE UNIT'S HEAT INPUT FOR SUCH  
18 CONTROL PERIOD MULTIPLIED BY THE DIFFERENCE BETWEEN  
19 0.25 LB/MMBTU AND THE UNIT'S NO<sub>x</sub> EMISSION RATE FOR SUCH  
20 CONTROL PERIOD, DIVIDED BY 2000 LB/TON, AND ROUNDED TO  
21 THE NEAREST WHOLE NUMBER OF TONS.  
22

1                   **(ii) THE EARLY REDUCTION CREDIT REQUEST MUST BE**  
2                   **SUBMITTED, IN A FORMAT SPECIFIED BY THE DEPARTMENT, BY**  
3                   **FEBRUARY 1, 2003. REQUESTS SUBMITTED AFTER FEBRUARY 1,**  
4                   **2003 WILL NOT BE ACCEPTED.**

5  
6                   **(b) FOR ANY NO<sub>x</sub> BUDGET UNIT THAT IS SUBJECT TO THE REQUIREMENTS OF**  
7                   **§§ 123.101 THROUGH 123.120, THE OWNERS AND OPERATORS MAY REQUEST**  
8                   **EARLY REDUCTION CREDITS IN ACCORDANCE WITH THE FOLLOWING**  
9                   **REQUIREMENTS:**

10  
11                   **(1) THE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE OF THE UNIT**  
12                   **MAY SUBMIT TO THE DEPARTMENT A REQUEST FOR EARLY**  
13                   **REDUCTION CREDITS IN AN AMOUNT EQUAL TO THE AMOUNT OF**  
14                   **BANKED ALLOWANCES UNDER §§ 123.101 THROUGH 123.120 THAT WERE**  
15                   **ALLOCATED FOR THE CONTROL PERIOD IN 2001 OR 2002 AND ARE HELD**  
16                   **BY THE UNIT, IN ACCORDANCE §§ 123.101 THROUGH 123.120, AS OF THE**  
17                   **DATE OF SUBMISSION OF THE REQUEST. DURING THE ENTIRE**  
18                   **CONTROL PERIOD IN 2001 OR 2002 FOR WHICH THE ALLOWANCES**  
19                   **WERE ALLOCATED, THE UNIT MUST HAVE MONITORED AND**  
20                   **REPORTED NO<sub>x</sub> EMISSIONS IN ACCORDANCE THE GUIDANCE FOR**  
21                   **IMPLEMENTATION OF EMISSION MONITORING REQUIREMENTS FOR**  
22                   **THE NO<sub>x</sub> BUDGET PROGRAM (JANUARY 28, 1997).**

1           **(2) THE EARLY REDUCTION CREDIT REQUEST UNDER PARAGRAPH (b)(1)**  
2           **MUST BE SUBMITTED, IN A FORMAT SPECIFIED BY THE DEPARTMENT,**  
3           **BY FEBRUARY 1, 2003. REQUESTS SUBMITTED AFTER FEBRUARY 1, 2003**  
4           **WILL NOT BE ACCEPTED.**

5  
6           **(3) THE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE OF THE UNIT**  
7           **SHALL NOT SUBMIT A REQUEST FOR EARLY REDUCTION CREDITS**  
8           **UNDER PARAGRAPH (b)(1) OF THIS SECTION FOR BANKED**  
9           **ALLOWANCES UNDER THE OZONE TRANSPORT COMMISSION NO<sub>x</sub>**  
10           **BUDGET PROGRAM THAT WERE ALLOCATED FOR ANY CONTROL**  
11           **PERIOD DURING WHICH THE UNIT MADE NO<sub>x</sub> EMISSION REDUCTIONS**  
12           **FOR WHICH HE OR SHE SUBMITS A REQUEST FOR EARLY REDUCTION**  
13           **CREDITS UNDER PARAGRAPH (a) OF THIS SECTION FOR THE UNIT.**

14  
15           **(c) FOR ANY NO<sub>x</sub> BUDGET UNIT THAT IS SUBJECT TO THE REQUIREMENTS OF**  
16           **SECTIONS 123.101 THROUGH 123.120 THAT INSTALLS SELECTIVE CATALYTIC**  
17           **REDUCTION OR SELECTIVE NONCATALYTIC REDUCTION TO REDUCE NO<sub>x</sub>**  
18           **EMISSIONS AFTER MAY 1999, THE OWNERS AND OPERATORS MAY REQUEST**  
19           **CONTROL EQUIPMENT EARLY REDUCTION CREDITS IN ACCORDANCE WITH**  
20           **THE FOLLOWING REQUIREMENTS:**

21  
22           **(1) EACH NO<sub>x</sub> BUDGET UNIT FOR WHICH THE OWNERS AND**  
23           **OPERATORS INTEND TO REQUEST, OR REQUEST EARLY REDUCTION**

1 CREDITS IN ACCORDANCE WITH THIS PARAGRAPH (c) OF THIS  
2 SECTION SHALL MONITOR AND REPORT NO<sub>x</sub> EMISSIONS IN  
3 ACCORDANCE WITH THE REQUIREMENTS OF THIS CHAPTER.

4  
5 (2) THE UNIT MUST BE IN COMPLIANCE WITH ANY APPLICABLE STATE  
6 OR FEDERAL NO<sub>x</sub> CONTROL REQUIREMENTS.

7  
8 (3) NO<sub>x</sub> EMISSION RATE AND HEAT INPUT UNDER PARAGRAPH (c)  
9 SHALL BE DETERMINED IN ACCORDANCE WITH THIS SUBCHAPTER.

10  
11 (4) EACH NO<sub>x</sub> BUDGET UNIT SHALL REDUCE ITS NO<sub>x</sub> EMISSIONS, FOR  
12 EACH CONTROL PERIOD FOR WHICH EARLY REDUCTION CREDITS ARE  
13 REQUESTED, TO LESS THAN THE ALLOWANCES FOR THE UNIT  
14 ESTABLISHED IN CHAPTER 123 APPENDIX E.

15  
16 (5) THE EARLY REDUCTION CREDIT REQUEST MUST BE SUBMITTED, IN  
17 A FORMAT SPECIFIED BY THE DEPARTMENT, BY FEBRUARY 1, 2003.  
18 REQUESTS SUBMITTED AFTER FEBRUARY 1, 2003 WILL NOT BE  
19 ACCEPTED.

20  
21 (d) FOR ANY NO<sub>x</sub> BUDGET UNIT THAT INSTALLS AND OPERATES INNOVATIVE  
22 CONTROL TECHNOLOGY, THE OWNERS AND OPERATORS MAY REQUEST

1 **INNOVATIVE TECHNOLOGY EARLY REDUCTION CREDITS IN ACCORDANCE**  
2 **WITH THE FOLLOWING REQUIREMENTS:**

3  
4 **(1) FOR PURPOSES OF PARAGRAPH (d), INNOVATIVE CONTROL**  
5 **TECHNOLOGY IS ANY TECHNOLOGY THAT REDUCES THE EMISSIONS**  
6 **OF MULTIPLE AIR CONTAMINANTS, INCLUDING, AT A MINIMUM, NO<sub>x</sub>,**  
7 **SO<sub>2</sub> AND MERCURY, THROUGH THE APPLICATION OF TECHNOLOGY OR**  
8 **TECHNOLOGY IMPROVEMENTS NOT PREVIOUSLY APPLIED TO NO<sub>x</sub>**  
9 **BUDGET UNITS IN AN AMOUNT GREATER THAN ANY APPLICABLE**  
10 **STATE OR FEDERAL REQUIREMENT.**

11  
12 **(2) THE UNIT MUST BE IN COMPLIANCE WITH ANY APPLICABLE STATE**  
13 **OR FEDERAL NO<sub>x</sub> CONTROL REQUIREMENTS.**

14  
15 **(3) NO<sub>x</sub> EMISSION RATE AND HEAT INPUT UNDER PARAGRAPH (d)**  
16 **SHALL BE DETERMINED IN ACCORDANCE WITH THIS SUBCHAPTER.**

17  
18 **(4) THE OWNERS AND OPERATORS OF EACH NO<sub>x</sub> BUDGET UNIT SHALL**  
19 **SUBMIT A PROPOSAL FOR THE DEVELOPMENT, DESIGN, AND TESTING**  
20 **OF INNOVATIVE CONTROL TECHNOLOGY INCLUDING MILESTONES**  
21 **FOR COMPLETING EACH PHASE OF THE PROPOSAL ALONG WITH A**  
22 **PROPOSAL AND JUSTIFICATION FOR THE NUMBER OF INNOVATIVE**

1 EARLY REDUCTION CREDITS REQUESTED BASED ON THE OVERALL AIR  
2 QUALITY BENEFITS OF THE INNOVATIVE TECHNOLOGY.

3  
4 (5) THE INNOVATIVE TECHNOLOGY PROPOSAL MUST BE COMPLETED  
5 BY AND THE EARLY REDUCTION CREDITS USED BY NOVEMBER 30, 2004.

6  
7 (6) FAILURE TO COMPLETE ANY PHASE OF THE PROPOSAL BY THE  
8 MILESTONE DATE ESTABLISHED UNDER THIS SECTION SHALL RESULT  
9 IN A LOSS OF ALLOWANCES IN AN AMOUNT EQUAL TO THE AMOUNT  
10 OF THE INNOVATIVE EARLY REDUCTION CREDITS GRANTED TO THE  
11 NO<sub>x</sub> BUDGET UNIT.

12  
13 (7) THE EARLY REDUCTION CREDIT REQUEST MUST BE SUBMITTED, IN  
14 A FORMAT SPECIFIED BY THE DEPARTMENT, BY FEBRUARY 1, 2003.  
15 REQUESTS SUBMITTED AFTER FEBRUARY 1, 2003 WILL NOT BE  
16 ACCEPTED.

17  
18 (e) THE DEPARTMENT WILL REVIEW EACH EARLY REDUCTION CREDIT  
19 REQUEST SUBMITTED IN ACCORDANCE WITH PARAGRAPHS (a) THROUGH (d)  
20 OF THIS SECTION AND WILL ALLOCATE NO<sub>x</sub> ALLOWANCES TO NO<sub>x</sub> BUDGET  
21 UNITS IN A GIVEN STATE AND COVERED BY SUCH REQUEST AS FOLLOWS:

22

1 **(1) UPON RECEIPT OF EACH EARLY REDUCTION CREDIT REQUEST, THE**  
2 **DEPARTMENT WILL MAKE ANY NECESSARY ADJUSTMENTS TO THE**  
3 **REQUEST TO ENSURE THAT THE AMOUNT OF THE EARLY REDUCTION**  
4 **CREDITS REQUESTED MEETS THE REQUIREMENTS OF PARAGRAPHS (a)**  
5 **THROUGH (d) OF THIS SECTION.**

6  
7 **(2) AFTER FEBRUARY 1, 2003, THE DEPARTMENT WILL PUBLISH IN THE**  
8 **PENNSYLVANIA BULLETIN A STATEMENT OF THE TOTAL NUMBER OF**  
9 **EARLY REDUCTION CREDITS REQUESTED BY NO<sub>x</sub> BUDGET UNITS IN**  
10 **THE STATE.**

11  
12 **(3) PENNSYLVANIA'S COMPLIANCE SUPPLEMENT POOL IS 15,763 NO<sub>x</sub>**  
13 **ALLOWANCES.**

14  
15 **(i) 1,576 NO<sub>x</sub> ALLOWANCES ARE AVAILABLE FOR THE CONTROL**  
16 **EQUIPMENT EARLY REDUCTION CREDITS ESTABLISHED UNDER**  
17 **SUBPARAGRAPH (c).**

18  
19 **(ii) 1,576 NO<sub>x</sub> ALLOWANCES ARE AVAILABLE FOR THE**  
20 **INNOVATIVE TECHNOLOGY EARLY REDUCTION CREDITS**  
21 **ESTABLISHED UNDER SUBPARAGRAPH (d).**  
22

1           **(iii) 12,611 NO<sub>x</sub> ALLOWANCES ARE AVAILABLE FOR THE EARLY**  
2           **REDUCTION CREDITS ESTABLISHED UNDER SUBPARAGRAPHS (a)**  
3           **AND (b).**

4  
5           **(iv) ANY UNUSED EARLY REDUCTION CREDITS ESTABLISHED**  
6           **UNDER SUBPARAGRAPHS (i) AND (ii) SHALL BE AVAILABLE FOR**  
7           **THE EARLY REDUCTION CREDITS ESTABLISHED UNDER**  
8           **SUBPARAGRAPHS (a) AND (b).**

9  
10           **(v) THE COMPLIANCE SUPPLEMENT POOL FOR UPWIND STATES**  
11           **IS LISTED IN SECTION 145.100(b) (RELATED TO APPLICABILITY TO**  
12           **UPWIND STATES).**

13  
14           **(4) IF THE COMPLIANCE SUPPLEMENT POOL FOR EACH OF THE**  
15           **CATEGORIES OF EARLY REDUCTION CREDITS ESTABLISHED IN**  
16           **SUBPARAGRAPH 3 HAS A NUMBER OF NO<sub>x</sub> ALLOWANCES NOT LESS**  
17           **THAN THE AMOUNT OF EARLY REDUCTION CREDITS IN ALL EARLY**  
18           **REDUCTION CREDIT REQUESTS RECEIVED UNDER SUBPARAGRAPHS (a)**  
19           **THROUGH (d) (AS ADJUSTED UNDER PARAGRAPH (e)(1) OF THIS**  
20           **SECTION) SUBMITTED BY FEBRUARY 1, 2003, THE DEPARTMENT WILL**  
21           **ALLOCATE TO EACH NO<sub>x</sub> BUDGET UNIT COVERED BY SUCH REQUEST**  
22           **ONE ALLOWANCE FOR EACH EARLY REDUCTION CREDIT REQUESTED**  
23           **(AS ADJUSTED UNDER PARAGRAPH (e)(1) OF THIS SECTION).**

1  
2 (5) IF THE COMPLIANCE SUPPLEMENT POOL HAS A SMALLER NUMBER  
3 OF NO<sub>x</sub> ALLOWANCES FOR ANY OF THE CATEGORIES OF EARLY  
4 REDUCTION CREDITS ESTABLISHED IN SUBPARAGRAPH 3 THAN THE  
5 AMOUNT OF EARLY REDUCTION CREDITS IN ALL EARLY REDUCTION  
6 REQUESTS UNDER PARAGRAPHS (a) THROUGH (d) OF THIS SECTION  
7 FOR 2001 AND 2002 (AS ADJUSTED UNDER PARAGRAPH (e)(1) OF THIS  
8 SECTION) SUBMITTED BY FEBRUARY 1, 2003, THE DEPARTMENT WILL  
9 ALLOCATE NO<sub>x</sub> ALLOWANCES FOR EACH OF THE CATEGORIES  
10 ESTABLISHED IN SUBPARAGRAPH 3 TO EACH NO<sub>x</sub> BUDGET UNIT  
11 COVERED BY SUCH REQUESTS ACCORDING TO THE FOLLOWING  
12 FORMULA AND ROUNDING TO THE NEAREST WHOLE NUMBER OF NO<sub>x</sub>  
13 ALLOWANCES AS APPROPRIATE. THIS PRORATA ALLOCATION WILL  
14 BE PERFORMED FOR ALLOCATIONS UNDER PARAGRAPHS (c) AND (d)  
15 AND ANY REQUESTS FOR NO<sub>x</sub> ALLOWANCES THAT ARE NOT FULLY  
16 ALLOCATED SHALL BE AVAILABLE FOR ALLOCATION UNDER  
17 PARAGRAPHS (a) AND (b) IF THEY OTHERWISE QUALIFY UNDER THOSE  
18 PARAGRAPHS:

19  
20 UNIT'S ALLOCATION FOR EARLY REDUCTION CREDITS = UNIT'S  
21 ADJUSTED EARLY REDUCTION CREDITS X (STATE'S  
22 COMPLIANCE SUPPLEMENT POOL ÷ TOTAL ADJUSTED EARLY  
23 REDUCTION CREDITS FOR ALL UNITS)

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**WHERE:**

**“UNIT’S ALLOCATION FOR EARLY REDUCTION CREDITS” IS THE NUMBER OF NO<sub>x</sub> ALLOWANCES ALLOCATED TO THE UNIT FOR EARLY REDUCTION CREDITS.**

**“UNIT’S ADJUSTED EARLY REDUCTION CREDITS” IS THE AMOUNT OF EARLY REDUCTION CREDITS REQUESTED FOR THE UNIT FOR 2001 AND 2002 IN EARLY REDUCTION CREDIT REQUESTS UNDER PARAGRAPHS (a) THROUGH (d) OF THIS SECTION, AS ADJUSTED UNDER PARAGRAPH (e)(1) OF THIS SECTION.**

**“STATES COMPLIANCE SUPPLEMENT POOL” IS THE NUMBER OF NO<sub>x</sub> ALLOWANCES FOR EACH CATEGORY OF EARLY REDUCTION CREDITS ESTABLISHED IN SUBPARAGRAPH 3.**

**“TOTAL ADJUSTED EARLY REDUCTION CREDITS FOR ALL UNITS” IS THE AMOUNT OF EARLY REDUCTION CREDITS REQUESTED FOR ALL UNITS FOR 2001 AND 2002 IN EARLY REDUCTION CREDIT REQUESTS UNDER PARAGRAPHS (a) THROUGH (d) OF THIS SECTION, AS ADJUSTED UNDER PARAGRAPH (e)(1) OF THIS SECTION.**

1  
2 (6) BY APRIL 1, 2003, THE DEPARTMENT WILL DETERMINE THE  
3 ALLOCATIONS UNDER PARAGRAPH (e)(4) OR (5) OF THIS SECTION. THE  
4 DEPARTMENT WILL MAKE AVAILABLE TO THE PUBLIC EACH  
5 DETERMINATION OF NO<sub>x</sub> ALLOWANCE ALLOCATIONS AND WILL  
6 PROVIDE AN OPPORTUNITY FOR COMMENT. BASED ON ANY SUCH  
7 COMMENTS, THE DEPARTMENT WILL ADJUST EACH DETERMINATION  
8 TO THE EXTENT NECESSARY TO ENSURE THAT IT IS IN ACCORDANCE  
9 WITH PARAGRAPH (e)(1), (4), OR (5) OF THIS SECTION.

10  
11 (7) BY MAY 1, 2003, THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL RECORD  
12 THE ALLOCATIONS UNDER PARAGRAPH (e)(3) OR (5) OF THIS SECTION.

13  
14 (8) NO<sub>x</sub> ALLOWANCES RECORDED UNDER PARAGRAPH (e)(7) OF THIS  
15 SECTION MAY BE DEDUCTED FOR COMPLIANCE UNDER § 145.54 FOR  
16 THE CONTROL PERIOD IN 2003 OR 2004. NOTWITHSTANDING § 145.55(a),  
17 THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL DEDUCT AS RETIRED ANY NO<sub>x</sub>  
18 ALLOWANCE THAT IS RECORDED UNDER PARAGRAPH (e)(7) OF THIS  
19 SECTION AND THAT IS NOT DEDUCTED FOR COMPLIANCE UNDER §  
20 145.54 FOR THE CONTROL PERIOD IN 2003 OR 2004.

1           **(9) NO<sub>x</sub> ALLOWANCES RECORDED UNDER PARAGRAPH (e)(7) OF THIS**  
2           **SECTION ARE TREATED AS BANKED ALLOWANCES IN 2004 FOR THE**  
3           **PURPOSES OF §§ 145.54(f) AND 145.55(b).**  
4

5           **ACCOUNTING PROCESS FOR DEPOSIT, USE AND TRANSFER OF ALLOWANCES**  
6

7           **§ 145.50. NO<sub>x</sub> Allowance Tracking System accounts.**  
8

9           (a) *Nature and function of compliance accounts and overdraft accounts.* Consistent with §  
10          145.51(a) (relating to establishment of accounts), the NO<sub>x</sub> Budget Administrator will establish  
11          one compliance account for each NO<sub>x</sub> budget unit and one overdraft account for each source  
12          with **TWO** [one] or more NO<sub>x</sub> budget units. Allocations of NO<sub>x</sub> allowances under §§ 145.40–  
13          145.42 or § 145.88 (relating to NO<sub>x</sub> allowance allocations; and opt-in source change in  
14          regulatory status) and deductions or transfers of NO<sub>x</sub> allowances under § 145.31, § 145.54, §  
15          145.56, §§ 145.60–145.62, or §§ 145.80–145.88 will be recorded in the compliance accounts or  
16          overdraft accounts.  
17

18          (b) *Nature and function of general accounts.* Consistent with § 145.51(b) (relating to  
19          establishment of accounts), the NO<sub>x</sub> Budget Administrator will establish, upon request, a general  
20          account for any person. Transfers of allowances under §§ 145.60–145.62 (relating to NO<sub>x</sub>  
21          allowance transfers) will be recorded in the general account.  
22

23          **§ 145.51. Establishment of accounts.**

1

2 (a) *Compliance accounts and overdraft accounts.* Upon receipt of a complete account certificate  
3 of representation under § 145.13 (relating to account certificate of representation), the NO<sub>x</sub>  
4 Budget Administrator will establish the following:

5

6 (1) A compliance account for each NO<sub>x</sub> budget unit for which the account certificate of  
7 representation was submitted.

8

9 (2) An overdraft account for each source for which the account certificate of  
10 representation was submitted and that has two or more NO<sub>x</sub> budget units.

11

12 (b) *General accounts.*

13

14 (1) *Elements for account.*

15

16 (i) A person may apply to open a general account for the purpose of holding and  
17 transferring allowances. A complete application for a general account shall be  
18 submitted to the NO<sub>x</sub> Budget Administrator and shall include the following  
19 elements in a format prescribed by the NO<sub>x</sub> Budget Administrator:

20

21 (A) The name, mailing address, e-mail address (if any), telephone number  
22 and facsimile transmission number (if any) of the NO<sub>x</sub> authorized account

1 representative and any alternate NO<sub>x</sub> authorized account representative.

2  
3 (B) The organization name and type of organization.

4  
5 (C) A list of all persons subject to a binding agreement for the NO<sub>x</sub>  
6 authorized account representative or any alternate NO<sub>x</sub> authorized account  
7 representative to represent their ownership interest with respect to the  
8 allowances held in the general account.

9  
10 (D) The following certification statement by the NO<sub>x</sub> authorized account  
11 representative and any alternate NO<sub>x</sub> authorized account representative:

12  
13 "I certify that I was selected as the NO<sub>x</sub> authorized account  
14 representative or the NO<sub>x</sub> alternate authorized account representative, as  
15 applicable, by an agreement that is binding on all persons who have an  
16 ownership interest with respect to allowances held in the general  
17 account. I certify that I have all the necessary authority to carry out my  
18 duties and responsibilities under the NO<sub>x</sub> Budget Trading Program on  
19 behalf of such persons and that each such person shall be fully bound by  
20 my representations, actions, inactions, or submissions and by any order  
21 or decision issued to me by the Department, Administrator or a court  
22 regarding the general account."

1 (E) The signature of the NO<sub>x</sub> authorized account representative and any  
2 alternate NO<sub>x</sub> authorized account representative and the dates signed.

3  
4 (ii) Unless otherwise required by the NO<sub>x</sub> Budget Administrator, documents of  
5 agreement referred to in the account certificate of representation may not be  
6 submitted to the NO<sub>x</sub> Budget Administrator. The Department or NO<sub>x</sub> Budget  
7 Administrator are not under any obligation to review or evaluate the sufficiency  
8 of the documents, if submitted.

9  
10 (2) *Receipt of complete application.* Upon receipt by the NO<sub>x</sub> Budget Administrator of a  
11 complete application for a general account under paragraph (1):

12  
13 (i) The NO<sub>x</sub> Budget Administrator will establish a general account for the person  
14 for whom the application is submitted.

15  
16 (ii) The NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized  
17 account representative for the general account shall represent and, by his  
18 representations, actions, inactions or submissions, legally bind each person who  
19 has an ownership interest with respect to NO<sub>x</sub> allowances held in the general  
20 account in all matters pertaining to the NO<sub>x</sub> Budget Trading Program, not-  
21 withstanding an agreement between the NO<sub>x</sub> authorized account representative or  
22 an alternate NO<sub>x</sub> authorized account representative and the person. This person  
23 shall be bound by any order or decision issued to the NO<sub>x</sub> authorized account

1 representative or an alternate NO<sub>x</sub> authorized account representative by the  
2 Department, Administrator or a court regarding the general account.

3  
4 (iii) Each submission concerning the general account shall be submitted, signed  
5 and certified by the NO<sub>x</sub> authorized account representative or an alternate NO<sub>x</sub>  
6 authorized account representative for the persons having an ownership interest  
7 with respect to NO<sub>x</sub> allowances held in the general account. Each submission  
8 shall include the following certification statement by the NO<sub>x</sub> authorized account  
9 representative or an alternate NO<sub>x</sub> authorized account representative:

10  
11 "I am authorized to make this submission on behalf of the persons  
12 having an ownership interest with respect to the NO<sub>x</sub> allowances held in  
13 the general account. I certify under penalty of law that I have personally  
14 examined, and am familiar with, the statements and information  
15 submitted in this document and all its attachments. Based on my inquiry  
16 of those individuals with primary responsibility for obtaining the  
17 information, I certify that the statements and information are to the best  
18 of my knowledge and belief true, accurate, and complete. I am aware  
19 that there are significant penalties for submitting false statements and  
20 information or omitting required statements and information, including  
21 the possibility of fine or imprisonment."

22  
23 (iv) The NO<sub>x</sub> Budget Administrator will accept or act on a submission concerning

1           the general account only if the submission has been made, signed and certified in  
2           accordance with subparagraph (iii).

3  
4           ***(3) Representative designation.***

5  
6           (i) An application for a general account may designate only one NO<sub>x</sub> authorized  
7           account representative and one alternate NO<sub>x</sub> authorized account representative  
8           who may act on behalf of the NO<sub>x</sub> authorized account representative. The  
9           agreement by which the alternate NO<sub>x</sub> authorized account representative is  
10          selected shall include a procedure for authorizing the alternate NO<sub>x</sub> authorized  
11          account representative to act in lieu of the NO<sub>x</sub> authorized account representative.

12  
13          (ii) Upon receipt by the NO<sub>x</sub> Budget Administrator of a complete application for a  
14          general account under paragraph (1), any representation, action, inaction or  
15          submission by an alternate NO<sub>x</sub> authorized account representative shall be  
16          deemed to be a representation, action, inaction or submission by the NO<sub>x</sub>  
17          authorized account representative.

18  
19          ***(4) Revising the account representative.***

20  
21          (i) The NO<sub>x</sub> authorized account representative for a general account may be  
22          changed at any time upon receipt by the NO<sub>x</sub> Budget Administrator of a  
23          superseding complete application for a general account under paragraph (1).

1 Notwithstanding a change, the representations, actions, inactions and submissions  
2 by the previous NO<sub>x</sub> authorized account representative prior to the time and date  
3 when the NO<sub>x</sub> Budget Administrator receives the superseding application for a  
4 general account shall be binding on the new NO<sub>x</sub> authorized account  
5 representative and the persons with an ownership interest with respect to the  
6 allowances in the general account.

7  
8 (ii) The alternate NO<sub>x</sub> authorized account representative for a general account may  
9 be changed at any time upon receipt by the NO<sub>x</sub> Budget Administrator of a  
10 superseding complete application for a general account under paragraph (1).

11 Notwithstanding a change, the representations, actions, inactions and submissions  
12 by the previous alternate NO<sub>x</sub> authorized account representative prior to the time  
13 and date when the NO<sub>x</sub> Budget Administrator receives the superseding application  
14 for a general account shall be binding on the new alternate NO<sub>x</sub> authorized  
15 account representative and the persons with an ownership interest with respect to  
16 the allowances in the general account.

17  
18 (iii) A revision of ownership listing shall include the following:

19  
20 (A) If a new person having an ownership interest with respect to NO<sub>x</sub>  
21 allowances in the general account is not included in the list of persons in  
22 the account certificate of representation, the new person shall be subject to  
23 and bound by the account certificate of representation, the representation,

1 actions, inactions and submissions of the NO<sub>x</sub> authorized account  
2 representative and any alternate NO<sub>x</sub> authorized account representative of  
3 the source or unit, and the decisions, orders, actions and inactions of the  
4 NO<sub>x</sub> Budget Administrator, as if the new person were included in the list.  
5

6 (B) Within 30 days following any change in the persons having an  
7 ownership interest with respect to NO<sub>x</sub> allowances in the general account,  
8 including the addition of persons, the NO<sub>x</sub> authorized account  
9 representative or an alternate NO<sub>x</sub> authorized account representative shall  
10 submit a revision to the application for a general account amending the list  
11 of persons having an ownership interest with respect to the NO<sub>x</sub>  
12 allowances in the general account to include the change.  
13

14 (5) *Reliance on application.*  
15

16 (i) Once a complete application for a general account under paragraph (1) has  
17 been submitted and received, the NO<sub>x</sub> Budget Administrator will rely on the  
18 application until a superseding complete application for a general account under  
19 paragraph (1) is received by the NO<sub>x</sub> Budget Administrator.  
20

21 (ii) Except as provided in paragraph (4), no objection or other communication  
22 submitted to the NO<sub>x</sub> Budget Administrator concerning the authorization, or any  
23 representation, action, inaction or submission of the NO<sub>x</sub> authorized account

1 representative or any alternate NO<sub>x</sub> authorized account representative for a  
2 general account will affect any representation, action, inaction or submission of  
3 the NO<sub>x</sub> authorized account representative or an alternate NO<sub>x</sub> authorized account  
4 representative or the finality of an decision or order by the Department or NO<sub>x</sub>  
5 Budget Administrator under the NO<sub>x</sub> Budget Trading Program.  
6

7 (iii) The Department or NO<sub>x</sub> Budget Administrator will not adjudicate a private  
8 legal dispute concerning the authorization or representation, action, inaction or  
9 submission of the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub>  
10 authorized account representative for a general account, including private legal  
11 disputes concerning the proceeds of NO<sub>x</sub> allowance transfers.  
12

13 (c) *Account identification.* The NO<sub>x</sub> Budget Administrator will assign a unique identifying  
14 number to each account established under subsection (a) or (b).  
15

16 **§ 145.52. NO<sub>x</sub> Allowance Tracking System responsibilities of NO<sub>x</sub> authorized account**  
17 **representative.**  
18

19 (a) *Establishment of account.* Following the establishment of an NO<sub>x</sub> Allowance Tracking  
20 System account, the submissions to the Department or the NO<sub>x</sub> Budget Administrator pertaining  
21 to the account, including, but not limited to, submissions concerning the deduction or transfer of  
22 NO<sub>x</sub> allowances in the account, shall be made only by the NO<sub>x</sub> authorized account representative  
23 for the account.

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(b) *Authorized account representative identification.* The NO<sub>x</sub> Budget Administrator will assign a unique identifying number to each NO<sub>x</sub> authorized account representative.

**§ 145.53. Recordation of NO<sub>x</sub> allowance allocations.**

(a) The NO<sub>x</sub> Budget Administrator will record the NO<sub>x</sub> allowances for 2003 in the NO<sub>x</sub> budget units' compliance accounts and the allocation set-asides, as allocated under §§ 145.40–145.42 (relating to NO<sub>x</sub> allowance allocations). The NO<sub>x</sub> Budget Administrator will also record the NO<sub>x</sub> allowances allocated under § 145.88(a)(1) (relating to NO<sub>x</sub> allowance allocations to opt-in units) for each NO<sub>x</sub> budget opt-in source in its compliance account. **NO<sub>x</sub> ALLOWANCES UNDER § 145.4(b)(4)(ii) OR § 145.5(c)(2) WILL BE RECORDED IN THE GENERAL ACCOUNT SPECIFIED BY THE OWNERS AND OPERATORS OF THE UNIT.**

**(b) BY MAY 1, 2001, THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL RECORD THE NO<sub>x</sub> ALLOWANCES FOR 2004 FOR A NO<sub>x</sub> BUDGET UNIT ALLOCATED UNDER §§ 145.40 THROUGH 145.43 IN THE UNIT'S COMPLIANCE ACCOUNT, EXCEPT FOR NO<sub>x</sub> ALLOWANCES UNDER § 145.4(b)(4)(ii) OR § 145.5(c)(2), WHICH WILL BE RECORDED IN THE GENERAL ACCOUNT SPECIFIED BY THE OWNERS AND OPERATORS OF THE UNIT. THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL RECORD NO<sub>x</sub> ALLOWANCES FOR 2004 FOR A NO<sub>x</sub> BUDGET OPT-IN UNIT IN THE UNIT'S COMPLIANCE ACCOUNT AS ALLOCATED UNDER § 145.88(a).**

1 (c) BY MAY 1, 2002, THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL RECORD THE NO<sub>x</sub>  
2 ALLOWANCES FOR 2005 FOR A NO<sub>x</sub> BUDGET UNIT ALLOCATED UNDER §§  
3 145.40 THROUGH 145.43 IN THE UNIT'S COMPLIANCE ACCOUNT, EXCEPT FOR  
4 NO<sub>x</sub> ALLOWANCES UNDER § 145.4(b)(4)(ii) OR § 145.5(c)(2), WHICH WILL BE  
5 RECORDED IN THE GENERAL ACCOUNT SPECIFIED BY THE OWNERS AND  
6 OPERATORS OF THE UNIT. THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL RECORD  
7 NO<sub>x</sub> ALLOWANCES FOR 2005 FOR A NO<sub>x</sub> BUDGET OPT-IN UNIT IN THE UNIT'S  
8 COMPLIANCE ACCOUNT AS ALLOCATED UNDER § 145.88(a).

9  
10 (d) BY MAY 1, 2003, THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL RECORD THE  
11 NO<sub>x</sub> ALLOWANCES FOR 2006 FOR A NO<sub>x</sub> BUDGET UNIT ALLOCATED UNDER §§  
12 145.40 THROUGH 145.43 IN THE UNIT'S COMPLIANCE ACCOUNT, EXCEPT FOR  
13 NO<sub>x</sub> ALLOWANCES UNDER § 145.4(b)(4)(ii) OR § 145.5(c)(2), WHICH WILL BE  
14 RECORDED IN THE GENERAL ACCOUNT SPECIFIED BY THE OWNERS AND  
15 OPERATORS OF THE UNIT. THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL RECORD  
16 NO<sub>x</sub> ALLOWANCES FOR 2006 FOR A NO<sub>x</sub> BUDGET OPT-IN UNIT IN THE UNIT'S  
17 COMPLIANCE ACCOUNT AS ALLOCATED UNDER § 145.88(a).

18  
19 (e) EACH YEAR STARTING WITH 2004, AFTER THE NO<sub>x</sub> BUDGET  
20 ADMINISTRATOR HAS MADE ALL DEDUCTIONS FROM A NO<sub>x</sub> BUDGET UNIT'S  
21 COMPLIANCE ACCOUNT AND THE OVERDRAFT ACCOUNT PURSUANT TO §  
22 145.54 (EXCEPT DEDUCTIONS PURSUANT TO § 145.54(d)(2)), THE NO<sub>x</sub> BUDGET  
23 ADMINISTRATOR WILL RECORD THE FOLLOWING:

1  
2 **(1) NO<sub>x</sub> ALLOWANCES, IN THE COMPLIANCE ACCOUNT, AS ALLOCATED**  
3 **TO THE UNIT UNDER §§ 145.40 THROUGH 145.43 FOR THE THIRD YEAR**  
4 **AFTER THE YEAR OF THE CONTROL PERIOD FOR WHICH SUCH**  
5 **DEDUCTIONS WERE OR COULD HAVE BEEN MADE.**

6  
7 **(2) NO<sub>x</sub> ALLOWANCES, IN THE GENERAL ACCOUNT SPECIFIED BY THE**  
8 **OWNERS AND OPERATORS OF THE UNIT, AS ALLOCATED UNDER §**  
9 **145.4(b)(4)(ii) OR § 145.5(c)(2) FOR THE THIRD YEAR AFTER THE YEAR OF**  
10 **THE CONTROL PERIOD FOR WHICH SUCH DEDUCTIONS ARE OR COULD**  
11 **HAVE BEEN MADE.**

12  
13 **(3) NO<sub>x</sub> ALLOWANCES, IN THE COMPLIANCE ACCOUNT, AS ALLOCATED**  
14 **TO THE UNIT UNDER § 145.88(a).**

15  
16 **[(b) Each year, after the NO<sub>x</sub> Budget Administrator has made all deductions from a NO<sub>x</sub>**  
17 **budget unit's compliance account and the overdraft account under § 145.54 (relating to**  
18 **compliance), the NO<sub>x</sub> Budget Administrator will record NO<sub>x</sub> allowances, as allocated to the**  
19 **unit under §§ 145.40–145.42 or under § 145.88(a)(2), in the compliance account for the year**  
20 **after the last year for which allowances were previously allocated to the compliance**  
21 **account. Each year, the NO<sub>x</sub> Budget Administrator will also record NO<sub>x</sub> allowances, as**  
22 **allocated under §§ 145.40–145.42, in the allocation set-aside for the year after the last year**  
23 **for which allowances were previously allocated to an allocation set-aside.]**

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**(f) [(c)]** Each NO<sub>x</sub> allowance will be assigned a unique identification number that will include digits identifying the year for which the NO<sub>x</sub> allowance is allocated.

**§ 145.54. Compliance.**

**(a) *NO<sub>x</sub> allowance transfer deadline.*** The NO<sub>x</sub> allowances are available to be deducted for compliance with a unit's NO<sub>x</sub> budget emissions limitation for a control period in a given year only if the NO<sub>x</sub> allowances meet the following conditions:

(1) The allowances are allocated for a control period in a prior year or the same year.

(2) The allowances are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO<sub>x</sub> allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO<sub>x</sub> allowance transfer correctly submitted for recordation under § 145.60 (relating to submission of NO<sub>x</sub> allowance transfers) by the NO<sub>x</sub> allowance transfer deadline for that control period.

**(b) *Deductions for compliance.***

(1) Following the recordation, in accordance with § 145.61 (relating to NO<sub>x</sub> transfer

1 recordation), of NO<sub>x</sub> allowance transfers submitted for recordation in the unit's  
2 compliance account or the overdraft account of the source where the unit is located by the  
3 NO<sub>x</sub> allowance transfer deadline for a control period, the NO<sub>x</sub> Budget Administrator will  
4 deduct NO<sub>x</sub> allowances available under subsection (a) to cover the unit's NO<sub>x</sub> emissions  
5 (as determined in accordance with §§ 145.70–145.76 (relating to recordkeeping and  
6 reporting requirements)), or to account for actual **HEAT INPUT [utilization]** under §  
7 145.42(e) (relating to NO<sub>x</sub> allowance allocations), for the control period:

8  
9 (i) From the compliance account.

10  
11 (ii) Only if no more NO<sub>x</sub> allowances available under subsection (a) remain in the  
12 compliance account, from the overdraft account. In deducting allowances for units  
13 at the source from the overdraft account, the NO<sub>x</sub> Budget Administrator will  
14 begin with the unit having the compliance account with the lowest NO<sub>x</sub>  
15 Allowance Tracking System account number and end with the unit having the  
16 compliance account with the highest NO<sub>x</sub> Allowance Tracking System account  
17 number (with account numbers sorted beginning with the left-most character and  
18 ending with the right-most character and the letter characters assigned values in  
19 alphabetical order and less than all numeric characters).

20  
21 (2) NO<sub>x</sub> allowances will be deducted first under subparagraph **(b)(1)(i)** and then under  
22 subparagraph **(b)(1)(ii)**:  
23

1 (i) Until the number of NO<sub>x</sub> allowances deducted for the control period equals the  
2 number of tons of NO<sub>x</sub> emissions, determined in accordance with §§ 145.70–  
3 145.76, from the unit for the control period for which compliance is being  
4 determined, plus the number of NO<sub>x</sub> allowances required for deduction to account  
5 for actual **HEAT INPUT [utilization]** under § 145.42(e) for the control period.

6  
7 (ii) Until no more NO<sub>x</sub> allowances available under subsection (a) remain in the  
8 respective account.

9  
10 (c) *Allowance identification.*

11  
12 (1) *Identification of NO<sub>x</sub> allowances by serial number.* The NO<sub>x</sub> authorized account  
13 representative for each compliance account may identify by serial number the NO<sub>x</sub>  
14 allowances to be deducted from the unit's compliance account under subsection (b), (d),  
15 [or] (e) **OR (f)**. The identification shall be made in the compliance certification report  
16 submitted in accordance with § 145.30 (relating to compliance certification report).

17  
18 (2) *First-in, first-out.* NO<sub>x</sub> allowances will be deducted for a control period from the  
19 compliance account, in the absence of an identification or in the case of a partial  
20 identification of NO<sub>x</sub> allowances by serial number under paragraph (1), or the overdraft  
21 account on a first-in, first-out (FIFO) accounting basis in the following order:

22  
23 (i) Those NO<sub>x</sub> allowances that were allocated for the control period to the unit

1 under §§ 145.40–~~145.42~~ 145.43 or §§ 145.80–145.88 (relating to NO<sub>x</sub>  
2 allowance allocations; and opt-in process).

3  
4 (ii) Those NO<sub>x</sub> allowances that were allocated for the control period to any unit  
5 and transferred and recorded in the account under §§ 145.60–145.62 (relating to  
6 NO<sub>x</sub> allowance transfers), in order of their date of recordation;

7  
8 (iii) Those NO<sub>x</sub> allowances that were allocated for a prior control period to the  
9 unit under §§ 145.40–~~145.42~~ 145.43 or §§ 145.80–145.88.

10  
11 (iv) Those NO<sub>x</sub> allowances that were allocated for a prior control period to any  
12 unit and transferred and recorded in the account under §§ 145.60–145.62, in order  
13 of their date of recordation.

14  
15 (d) *Deductions for excess emissions.*

16  
17 (1) After making the deductions for compliance under subsection (b), the NO<sub>x</sub> Budget  
18 Administrator will deduct from the unit's compliance account or the overdraft account of  
19 the source where the unit is located a number of NO<sub>x</sub> allowances, allocated for a control  
20 period after the control period in which the unit has excess emissions, equal to three times  
21 the number of the unit's excess emissions.

22  
23 (2) If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub>

1 allowances, the NO<sub>x</sub> Budget Administrator will deduct the required number of NO<sub>x</sub>  
2 allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub>  
3 allowances are recorded in either account.

4  
5 (3) An allowance deduction required under subsection (d) does not affect the liability of  
6 the owners and operators of the NO<sub>x</sub> budget unit for any fine, penalty or assessment, or  
7 their obligation to comply with any other remedy, for the same violation, as ordered  
8 under the Clean Air Act or the act. The following guidelines will be followed in assessing  
9 fines, penalties or other obligations:

10  
11 (i) For purposes of determining the number of days of violation, if a NO<sub>x</sub> budget  
12 unit has excess emissions for a control period, each day in the control period (153  
13 days) constitutes a day in violation unless the owners and operators of the unit  
14 demonstrate that a lesser number of days should be considered.

15  
16 (ii) Each ton of excess emissions is a separate violation.

17  
18 (e) *Deductions for units sharing a common stack.* In the case of units sharing a common stack  
19 and having emissions that are not separately monitored or apportioned in accordance with §§  
20 145.70–145.76:

21  
22 (1) The NO<sub>x</sub> authorized account representative of the units may identify the percentage of  
23 NO<sub>x</sub> allowances to be deducted from each unit's compliance account to cover the unit's

1 share of NO<sub>x</sub> emissions from the common stack for a control period. The identification  
2 shall be made in the compliance certification report submitted in accordance with §  
3 145.30.

4  
5 (2) Notwithstanding subparagraph **(b)(2)(i)**, the NO<sub>x</sub> Budget Administrator will deduct  
6 NO<sub>x</sub> allowances for each unit until the number of NO<sub>x</sub> allowances deducted equals the  
7 unit's identified percentage (under paragraph (1)) of the number of tons of NO<sub>x</sub>  
8 emissions, as determined in accordance with §§ 145.70–145.76, from the common stack  
9 for the control period for which compliance is being determined or, if no percentage is  
10 identified, an equal percentage for each unit, plus the number of allowances required for  
11 deduction to account for actual **HEAT INPUT [utilization]** under § 145.42(e) for the  
12 control period.

13  
14 **(f) DEDUCTION OF BANKED ALLOWANCES. EACH YEAR STARTING IN 2005,**  
15 **AFTER THE NO<sub>x</sub> BUDGET ADMINISTRATOR HAS COMPLETED THE**  
16 **DESIGNATION OF BANKED ALLOWANCES UNDER § 145.55(b) AND BEFORE MAY**  
17 **1 OF THE YEAR, THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL DETERMINE THE**  
18 **EXTENT TO WHICH BANKED NO<sub>x</sub> ALLOWANCES OTHERWISE AVAILABLE**  
19 **UNDER SUBSECTION (a) ARE AVAILABLE FOR COMPLIANCE IN THE CONTROL**  
20 **PERIOD FOR THE CURRENT YEAR AS FOLLOWS:**

21  
22 **(1) THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL DETERMINE THE TOTAL**  
23 **NUMBER OF BANKED NO<sub>x</sub> ALLOWANCES HELD IN COMPLIANCE**

1 ACCOUNTS, OVERDRAFT ACCOUNTS, OR GENERAL ACCOUNTS.

2  
3 (2) IF THE TOTAL NUMBER OF BANKED NO<sub>x</sub> ALLOWANCES  
4 DETERMINED, UNDER PARAGRAPH (1), TO BE HELD IN COMPLIANCE  
5 ACCOUNTS, OVERDRAFT ACCOUNTS, OR GENERAL ACCOUNTS IS LESS  
6 THAN OR EQUAL TO 10 PERCENT OF THE SUM OF THE TRADING  
7 PROGRAM BUDGETS UNDER § 145.40 FOR ALL STATES FOR THE  
8 CONTROL PERIOD, ANY BANKED NO<sub>x</sub> ALLOWANCE MAY BE DEDUCTED  
9 FOR COMPLIANCE IN ACCORDANCE WITH SUBSECTIONS (a) THROUGH  
10 (e).

11  
12 (3) IF THE TOTAL NUMBER OF BANKED NO<sub>x</sub> ALLOWANCES  
13 DETERMINED, UNDER PARAGRAPH (1) TO BE HELD IN COMPLIANCE  
14 ACCOUNTS, OVERDRAFT ACCOUNTS, OR GENERAL ACCOUNTS  
15 EXCEEDS 10 PERCENT OF THE SUM OF THE TRADING PROGRAM  
16 BUDGETS UNDER § 145.40 FOR PENNSYLVANIA AND THE TRADING  
17 PROGRAM BUDGETS APPROVED BY THE ADMINISTRATOR FOR OTHER  
18 STATES PARTICIPATING IN THE NO<sub>x</sub> BUDGET TRADING PROGRAM FOR  
19 THE CONTROL PERIOD, ANY BANKED ALLOWANCE MAY BE DEDUCTED  
20 FOR COMPLIANCE IN ACCORDANCE WITH SUBSECTIONS (a) THROUGH  
21 (e), EXCEPT AS FOLLOWS:

22  
23 (i) THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL DETERMINE THE

1 FOLLOWING RATIO: 0.10 MULTIPLIED BY THE SUM OF THE  
2 TRADING PROGRAM BUDGETS UNDER § 145.40 FOR ALL STATES  
3 FOR THE CONTROL PERIOD AND DIVIDED BY THE TOTAL  
4 NUMBER OF BANKED NO<sub>x</sub> ALLOWANCES DETERMINED, UNDER  
5 PARAGRAPH (f)(1), TO BE HELD IN COMPLIANCE ACCOUNTS,  
6 OVERDRAFT ACCOUNTS, OR GENERAL ACCOUNTS.

7  
8 (ii) THE NO<sub>x</sub> BUDGET ADMINISTRATOR WILL MULTIPLY THE  
9 NUMBER OF BANKED NO<sub>x</sub> ALLOWANCES IN EACH COMPLIANCE  
10 ACCOUNT OR OVERDRAFT ACCOUNT BY THE RATIO  
11 DETERMINED UNDER SUBPARAGRAPH (f)(3)(i). THE RESULTING  
12 PRODUCT IS THE NUMBER OF BANKED NO<sub>x</sub> ALLOWANCES IN THE  
13 ACCOUNT THAT MAY BE DEDUCTED FOR COMPLIANCE IN  
14 ACCORDANCE WITH SUBSECTIONS (a) THROUGH (e), EXCEPT  
15 THAT, IF SUCH NO<sub>x</sub> ALLOWANCES ARE USED TO MAKE A  
16 DEDUCTION UNDER SUBSECTION (b) OR (e), TWO (RATHER THAN  
17 ONE) SUCH NO<sub>x</sub> ALLOWANCES SHALL AUTHORIZE UP TO ONE  
18 TON OF NO<sub>x</sub> EMISSIONS DURING THE CONTROL PERIOD AND  
19 MUST BE DEDUCTED FOR EACH DEDUCTION OF ONE NO<sub>x</sub>  
20 ALLOWANCE REQUIRED UNDER SUBSECTION (b) OR (e).

21  
22 (g) [(f)] The NO<sub>x</sub> Budget Administrator will record in the appropriate compliance account or  
23 overdraft account all deductions from such an account under subsection (b), (d), [or] (e) OR (f).

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**§ 145.55. Banking.**

**[(a)] NO<sub>x</sub> allowances may be banked for future use or transfer in a compliance account, an overdraft account or a general account, as follows:**

**(1) An NO<sub>x</sub> allowance that is held in a compliance account, an overdraft account or a general account will remain in the account until the NO<sub>x</sub> allowance is deducted or transferred under § 145.31, § 145.54, § 145.56, §§ 145.60–145.62 or §§ 145.80–145.88.**

**(2) The NO<sub>x</sub> Budget Administrator will designate, as a "banked" NO<sub>x</sub> allowance, an NO<sub>x</sub> allowance that remains in a compliance account, an overdraft account or a general account after deductions have been made for a given control period from the compliance account or overdraft account under § 145.54 (relating to compliance) (EXCEPT DEDUCTIONS PURSUANT TO § 145.54(d)(2)) AND THAT WERE ALLOCATED FOR THAT CONTROL PERIOD OR A CONTROL PERIOD IN A PRIOR YEAR).**

**[(b) Each year starting in 2004, after the designation of banked NO<sub>x</sub> allowances under subsection (a)(2) and before May 1 of the year, the extent to which banked NO<sub>x</sub> allowances may be used for compliance in the control period for the current year will be determined, as follows:**

1           **(1) The total number of banked NO<sub>x</sub> allowances held in compliance accounts,**  
2           **overdraft accounts or general accounts will be determined.**

3  
4           **(2) If the total number of banked NO<sub>x</sub> allowances determined, under paragraph (1),**  
5           **to be held in compliance accounts, overdraft accounts or general accounts is less**  
6           **than or equal to 10% of the sum of the state trading program budgets for the**  
7           **control period for the states in which NO<sub>x</sub> budget units are located, any banked NO<sub>x</sub>**  
8           **allowance may be deducted for compliance in accordance with § 145.54.**

9  
10          **(3) If the total number of banked NO<sub>x</sub> allowances determined, under paragraph (1),**  
11          **to be held in compliance accounts, overdraft accounts, or general accounts exceeds**  
12          **10% of the sum of the state trading program budgets for the control period for the**  
13          **States in which NO<sub>x</sub> budget units are located, any banked allowance may be**  
14          **deducted for compliance in accordance with § 145.54, except as follows:**

15  
16               **(i) A ratio will be determined as follows: 0.10 multiplied by the sum of the**  
17               **state trading program budgets for the control period for the states in which**  
18               **NO<sub>x</sub> budget units are located and divided by the total number of banked NO<sub>x</sub>**  
19               **allowances determined, under paragraph (1), to be held in compliance**  
20               **accounts, overdraft accounts or general accounts.**

21  
22               **(ii) The number of banked NO<sub>x</sub> allowances in each compliance account or**  
23               **overdraft account will be multiplied by the ratio developed in subparagraph**

1           **(i) and rounded. The resulting product is the number of banked NO<sub>x</sub>**  
2           **allowances in the account that may be deducted for compliance in**  
3           **accordance with § 145.54. Banked NO<sub>x</sub> allowances in excess of the resulting**  
4           **product may be deducted for compliance in accordance with § 145.54, except**  
5           **that, if the NO<sub>x</sub> allowances are used to make a deduction, two of the NO<sub>x</sub>**  
6           **allowances shall be deducted for each deduction of one NO<sub>x</sub> allowance**  
7           **required under § 145.54.]**

8  
9           **[(c) An NO<sub>x</sub> budget unit may reduce its NO<sub>x</sub> emission rate in the 2001 or 2002 control**  
10           **period, the owner or operator of the unit may request early reduction credits, and the**  
11           **Department may allocate NO<sub>x</sub> allowances in 2003 to the unit in accordance with the**  
12           **following requirements.**

13  
14           **(1) Each NO<sub>x</sub> budget unit for which the owner or operator requests any early**  
15           **reduction credits under paragraph (4) shall monitor NO<sub>x</sub> emissions in accordance**  
16           **with §§ 145.70–145.76 (relating to recordkeeping and reporting requirements)**  
17           **starting in the 2000 control period and for each control period for which the early**  
18           **reduction credits are requested. The unit's monitoring system availability shall be at**  
19           **least 90% during the 2000 control period, and the unit shall be in compliance with**  
20           **any applicable State or Federal NO<sub>x</sub> emissions or emissions-related requirements.**

21  
22           **(2) NO<sub>x</sub> emission rate and heat input under paragraphs (3)–(5) shall be determined**  
23           **in accordance with §§ 145.70–145.76.**

1  
2 **(3) Each NO<sub>x</sub> budget unit for which the owner or operator requests early credits**  
3 **under paragraph (4) shall reduce its NO<sub>x</sub> emission rate, for each control period for**  
4 **which early reduction credits are requested, to less than both 0.25 lb/mmBtu and**  
5 **80% of the unit's NO<sub>x</sub> emission rate in the 2000 control period.**

6  
7 **(4) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit located in this**  
8 **Commonwealth that meets the requirements of paragraphs (1) and (3) may submit**  
9 **to the Department a request for early reduction credits for the unit based on NO<sub>x</sub>**  
10 **emission rate reductions made by the unit in the control period for 2001 or 2002 in**  
11 **accordance with paragraph (3).**

12  
13 **(i) In the early reduction credit request, the NO<sub>x</sub> authorized account may**  
14 **request early reduction credits for the control period in an amount equal to**  
15 **the unit's heat input for the control period multiplied by the difference**  
16 **between 0.25 lb/mmBtu and the unit's NO<sub>x</sub> emission rate for the control**  
17 **period, divided by 2000 lb/ton, and rounded to the nearest ton.**

18  
19 **(ii) The early reduction credit request shall be submitted, in a format**  
20 **specified by the Department, by October 31 of the year in which the NO<sub>x</sub>**  
21 **emission rate reductions on which the request is based are made.**

22  
23 **(5) The Department will allocate NO<sub>x</sub> allowances, to NO<sub>x</sub> budget units meeting the**

1 requirements of paragraphs (1) and (3) and covered by early reduction requests  
2 meeting the requirements of paragraph (4)(ii), in accordance with the following  
3 procedures:

4  
5 (i) Upon receipt of each early reduction credit request, the Department will  
6 accept the request only if the requirements of paragraphs (1), (3) and (4)(ii)  
7 are met and, if the request is accepted, will make any necessary adjustments  
8 to the request to ensure that the amount of the early reduction credits  
9 requested meets the requirement of paragraphs (2) and (4).

10  
11 (ii) If this Commonwealth's compliance supplement pool has an amount of  
12 NO<sub>x</sub> allowances not less than the number of early reduction credits in all  
13 accepted early reduction credit requests for 2001 and 2002 (as adjusted  
14 under subparagraph (i)), the Department will allocate to each NO<sub>x</sub> budget  
15 unit covered by the accepted requests one allowance for each early reduction  
16 credit requested (as adjusted under subparagraph (i)).

17  
18 (iii) If this Commonwealth's compliance supplement pool has a smaller  
19 amount of NO<sub>x</sub> allowances than the number of early reduction credits in all  
20 accepted early reduction credit requests for 2001 and 2002 (as adjusted  
21 under subparagraph (i)), the Department will allocate NO<sub>x</sub> allowances to  
22 each NO<sub>x</sub> budget unit covered by the accepted requests according to the  
23 following formula:

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**Unit's allocated early reduction credits = [(Unit's adjusted early reduction credits)/(Total adjusted early reduction credits requested by all units)] x (Available NO<sub>x</sub> allowances from this Commonwealth compliance supplement pool)**

**Where:**

**"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for 2001 and 2002 in accepted early reduction credit requests, as adjusted under subparagraph (i).**

**"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for 2001 and 2002 in accepted early reduction credit requests, as adjusted under subparagraph (i).**

**"Available NO<sub>x</sub> allowances from this Commonwealth's compliance supplement pool" is the number of NO<sub>x</sub> allowances in this Commonwealth's compliance supplement pool and available for early reduction credits for 2001 and 2002.**

**(6) By May 1, 2003, the Department will allocate the NO<sub>x</sub> allowances determined**

1           **under paragraph (5). The allocations will be recorded in the NO<sub>x</sub> allowance tracking**  
2           **system to the extent that they are consistent with the requirements of paragraphs**  
3           **(1)– (5).**

4  
5           **(7) NO<sub>x</sub> allowances recorded under paragraph (6) may be deducted for compliance**  
6           **under § 145.54 for the control periods in 2003 or 2004. Notwithstanding subsection**  
7           **(a), the NO<sub>x</sub>, Budget Administrator will deduct as retired any NO<sub>x</sub> allowance that is**  
8           **recorded under paragraph (6) and is not deducted for compliance in accordance**  
9           **with § 145.54 for the control period in 2003 or 2004.**

10  
11           **(8) NO<sub>x</sub> allowances recorded under paragraph (6) are treated as banked allowances**  
12           **in 2004 for the purposes of subsections (a) and (b).**

13  
14           **(9) NO<sub>x</sub> allowances contained in compliance or overdraft accounts by affected units**  
15           **located in this Commonwealth under § 123.110 (relating to source compliance**  
16           **requirements) for years 2000 through 2002 shall be deemed to have met the**  
17           **requirements of subsections (a) and (c). The NO<sub>x</sub> authorized account representative**  
18           **shall submit the application as required by subsection (c) to the Department.**

19  
20           **(10) The compliance supplement pool for this Commonwealth is 13,716 allowances.]**

21  
22           **§ 145.56. Account error.**

1 The NO<sub>x</sub> Budget Administrator may correct any error in any NO<sub>x</sub> Allowance Tracking System  
2 account. Within 10 business days of making the correction, the NO<sub>x</sub> Budget Administrator will  
3 notify the NO<sub>x</sub> authorized account representative for the account.

4  
5 **§ 145.57. Closing of general accounts.**

6  
7 (a) The NO<sub>x</sub> authorized account representative of a general account may instruct the NO<sub>x</sub> Budget  
8 Administrator to close the account by submitting a statement requesting deletion of the account  
9 from the NO<sub>x</sub> Allowance Tracking System and by correctly submitting for recordation under §  
10 145.60 (relating to submission of NO<sub>x</sub> allowance transfers) an allowance transfer of all NO<sub>x</sub>  
11 allowances in the account to one or more other NO<sub>x</sub> Allowance Tracking System accounts.

12  
13 (b) If a general account shows no activity for 1 year or more and does not contain any NO<sub>x</sub>  
14 allowances, the NO<sub>x</sub> Budget Administrator may notify the NO<sub>x</sub> authorized account representative  
15 for the account that the account will be closed and deleted from the NO<sub>x</sub> Allowance Tracking  
16 System following 20 business days after the notice is sent. The account will be closed after the  
17 20-day period unless before the end of the 20-day period the NO<sub>x</sub> Budget Administrator receives  
18 a correctly submitted transfer of NO<sub>x</sub> allowances into the account under § 145.60 or a statement  
19 submitted by the NO<sub>x</sub> authorized account representative requesting that the account should not  
20 be closed.

21

22

**NO<sub>x</sub> ALLOWANCE TRANSFERS**

23

1 **§ 145.60. Submission of NO<sub>x</sub> allowance transfers.**

2

3 The NO<sub>x</sub> authorized account representatives seeking recordation of a NO<sub>x</sub> allowance transfer  
4 shall submit the transfer to the NO<sub>x</sub> Budget Administrator. To be considered correctly submitted,  
5 the NO<sub>x</sub> allowance transfer shall include the following elements in a format specified by the NO<sub>x</sub>  
6 Budget Administrator:

7

8 (1) The numbers identifying both the transferor and transferee accounts.

9

10 (2) A specification by serial number of each NO<sub>x</sub> allowance to be transferred.

11

12 (3) The printed name and signature of the NO<sub>x</sub> authorized account representative of the  
13 transferor account and the date signed.

14

15 **§ 145.61. NO<sub>x</sub> transfer recordation.**

16

17 (a) Within 5 business days of receiving a NO<sub>x</sub> allowance transfer, except as provided in  
18 subsection (b), the NO<sub>x</sub> Budget Administrator will record a NO<sub>x</sub> allowance transfer by moving  
19 each NO<sub>x</sub> allowance from the transferor account to the transferee account as specified by the  
20 request, if the following conditions are met (relating to submission of NO<sub>x</sub> allowance transfers).

21

22 (1) The transfer is correctly submitted under § 145.60.

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(2) The transferor account includes each NO<sub>x</sub> allowance identified by serial number in the transfer.

**[(3) The transfer meets all other requirements of this subchapter.]**

(b) An NO<sub>x</sub> allowance transfer that is submitted for recordation following the NO<sub>x</sub> allowance transfer deadline and that includes any NO<sub>x</sub> allowances allocated for a control period prior to or the same as the control period to which the NO<sub>x</sub> allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO<sub>x</sub> allowance allocations in § 145.53[(b)] (relating to recordation of NO<sub>x</sub> allowance allocations) **IN THE SAME YEAR AS THE NO<sub>x</sub> ALLOWANCE TRANSFER DEADLINE.**

(c) An NO<sub>x</sub> allowance transfer submitted for recordation that fails to meet the requirements of subsection (a) will not be recorded.

**§ 145.62. Notification.**

(a) *Notification of recordation.* Within 5 business days of recordation of a NO<sub>x</sub> allowance transfer under § 145.61 (relating to NO<sub>x</sub> transfer recordation), the NO<sub>x</sub> Budget Administrator will notify each party to the transfer. Notice will be given to the NO<sub>x</sub> authorized account representatives of both the transferor and transferee accounts.

1 (b) *Notification of nonrecording.* Within 10 business days of receipt of a NO<sub>x</sub> allowance  
2 transfer that fails to meet the requirements of § 145.61(a), the NO<sub>x</sub> Budget Administrator will  
3 notify the NO<sub>x</sub> authorized account representatives of both accounts subject to the transfer of:

4

5 (1) A decision not to record the transfer.

6

7 (2) The reasons for the nonrecording.

8

9 (c) *Resubmission.* Nothing in this section precludes the submission of a NO<sub>x</sub> allowance transfer  
10 for recording following notification of nonrecording.

11

## 12 **RECORDKEEPING AND REPORTING REQUIREMENTS**

13

### 14 **§ 145.70. General monitoring requirements.**

15

16 The owners and operators, and to the extent applicable, the NO<sub>x</sub> authorized account  
17 representative of a NO<sub>x</sub> budget unit, shall comply with the monitoring and reporting  
18 requirements as provided in this section and §§ 145.71–145.76 (relating to recordkeeping and  
19 reporting requirements) and in 40 CFR Part 75 **SUBPART H** (relating to continuous emission  
20 monitoring). For purposes of complying with these requirements, the definitions in § 145.2 and  
21 in 40 CFR 72.2 (relating to definitions) apply, and the terms "affected unit," "designated  
22 representative" and "continuous emission monitoring system" (or "CEMS") in 40 CFR Part 75  
23 shall be replaced by the terms "NO<sub>x</sub> Budget unit," "NO<sub>x</sub> authorized account representative" and

1 "continuous emission monitoring system" (or "CEMS"), respectively, as defined in § 145.2  
2 (relating to definitions). **THE OWNER AND OPERATOR OF A UNIT THAT IS NOT A**  
3 **NO<sub>x</sub> BUDGET UNIT BUT THAT IS MONITORED UNDER 40 CFR SECTION**  
4 **75.72(b)(2)(ii) SHALL COMPLY WITH THE MONITORING, RECORDKEEPING, AND**  
5 **REPORTING REQUIREMENTS FOR A NO<sub>x</sub> BUDGET UNIT UNDER THIS**  
6 **SUBCHAPTER.**

7  
8 (1) *Requirements for installation, certification and data accounting.* The owner or  
9 operator of each NO<sub>x</sub> budget unit shall meet the following requirements. These  
10 provisions also apply to a unit for which an application for a NO<sub>x</sub> Budget opt-in  
11 **APPROVAL [permit]** is submitted and not denied or withdrawn, as provided in §§  
12 145.80–145.88 (relating to opt-in process).

13  
14 (i) Install all monitoring systems required under this subchapter for monitoring  
15 NO<sub>x</sub> mass **EMISSIONS**. This includes all systems required to monitor NO<sub>x</sub>  
16 emission rate, NO<sub>x</sub> concentration, heat input **RATE** and **STACK** flow **RATE**, in  
17 accordance with 40 CFR 75.72 and 75.76.

18  
19 (ii) Install the monitoring systems for monitoring heat input. **[, if required under**  
20 **§ 145.76 (relating to petitions) for developing NO<sub>x</sub> allowance allocations.]**

21  
22 (iii) Successfully complete the certification tests required under § 145.71 (relating  
23 to initial certification and recertification procedures) and meet all other provisions

1 of this subchapter and 40 CFR Part 75 applicable to the monitoring systems under  
2 subparagraphs (i) and (ii).

3  
4 (iv) Record, [and] report **AND QUALITY-ASSURE THE** data from the  
5 monitoring systems under subparagraphs (i) and (ii).

6  
7 (2) *Compliance dates.* The owner or operator shall meet the requirements of paragraph  
8 (1)(i)–(iii) on or before the following dates and shall record and report data on and after  
9 the following dates:

10  
11 (i) NO<sub>x</sub> budget units for which the owner or operator intends to apply for early  
12 reduction credits under § **145.43(a) OR (c)** [145.55(d)] (relating to banking) shall  
13 comply with the requirements of this section and §§ 145.71–145.76 by May 1,  
14 2000 **EXCEPT THAT COMPLIANCE WITH THE PROVISION OF**  
15 **§§ 123.108 MAY BE USED AS AN ALTERNATIVE MONITORING**  
16 **METHOD FOR THE 2000 CONTROL PERIOD. IF THE OWNER OR**  
17 **OPERATOR OF A NO<sub>x</sub> BUDGET UNIT FAILS TO MEET THIS**  
18 **DEADLINE, HE OR SHE IS NOT ELIGIBLE TO APPLY FOR EARLY**  
19 **REDUCTION CREDITS UNDER § 145.43(a) OR (c) AND IS SUBJECT TO**  
20 **THE DEADLINE UNDER SUBPARAGRAPH (2)(ii).**

21  
22 (ii) Except for NO<sub>x</sub> budget units under subparagraph (i), NO<sub>x</sub> budget units under §  
23 145.4 (relating to applicability) that commence operation before January 1, 2002,

1 shall comply with the requirements of this section and §§ 145.71–145.76 by May  
2 1, 2002.

3  
4 (iii) NO<sub>x</sub> budget units under § 145.4(a)(1) that commence operation on or after  
5 January 1, 2002, and that report on an annual basis under § 145.74(d) (relating to  
6 recordkeeping and reporting) shall comply with the requirements of this section  
7 and §§ 145.71–145.76 by the later of the following dates:

8  
9 (A) May 1, 2002.

10  
11 (B) **90 DAYS AFTER THE DATE ON WHICH THE UNIT**  
12 **COMMENCES COMERCIAL OPERATION.** [The earlier of one of  
13 the following:

14  
15 (I) **One hundred eighty days after the date on which the unit**  
16 **commences operation**

17  
18 (II) **Ninety days after the date on which the unit commences**  
19 **commercial operation, for units under § 145.4(1)]**

20  
21 (iv) NO<sub>x</sub> budget units under § 145.4(a)(1) that commence operation on or after  
22 January 1, 2002, and that report on a control season basis under § 145.74(d)(2)(ii)  
23 shall comply with this section and §§ 145.71–145.76 by **NO LATER THAN 90**

1 DAYS AFTER THE DATE ON WHICH THE UNIT COMMENCES  
2 COMMERCIAL OPERATION, PROVIDED THAT THIS DATE IS  
3 DURING A CONTROL PERIOD. IF THIS DATE DOES NOT OCCUR  
4 DURING A CONTROL PERIOD, THE APPLICABLE DEADLINE IS  
5 MAY 1 IMMEDIATELY FOLLOWING THIS DATE. [the later of the  
6 following dates:

7  
8 (A) The earlier of one of the following dates. However, if the  
9 applicable deadline under this clause does not occur during a control  
10 period, May 1 immediately following the date determined in  
11 accordance with clause (A).

12  
13 (I) One hundred eighty days after the date on which the unit  
14 commences operation or,

15  
16 (II) Ninety days after the date on which the unit commences  
17 commercial operation, for units under § 145.4(1).]

18  
19 (v) FOR THE OWNER OR OPERATOR OF A NO<sub>x</sub> BUDGET UNIT  
20 UNDER § 145.4(a)(2) THAT COMMENCES OPERATION ON OR AFTER  
21 JANUARY 1, 2002 AND THAT REPORTS ON AN ANNUAL BASIS  
22 UNDER § 145.72(d), BY THE LATER OF THE FOLLOWING DATES:  
23

1                   **(I) MAY 1, 2002.**

2  
3                   **(II) 180 DAYS AFTER THE DATE ON WHICH THE UNIT**  
4                   **COMMENCES OPERATION.**

5  
6                   **(vi) FOR THE OWNER OR OPERATOR OF A NO<sub>x</sub> BUDGET UNIT**  
7                   **UNDER § 145.4(a)(2) THAT COMMENCES OPERATION ON OR AFTER**  
8                   **JANUARY 1, 2002 AND THAT REPORTS ON A CONTROL PERIOD**  
9                   **BASIS UNDER § 145.72(d)(2)(ii), BY 180 DAYS AFTER THE DATE ON**  
10                  **WHICH THE UNIT COMMENCES OPERATION, PROVIDED THAT**  
11                  **THIS DATE IS DURING A CONTROL PERIOD. IF THIS DATE DOES**  
12                  **NOT OCCUR DURING A CONTROL PERIOD, THE APPLICABLE**  
13                  **DEADLINE IS MAY 1 IMMEDIATELY FOLLOWING THIS DATE.**

14  
15                  **(vii) [(v)] For a NO<sub>x</sub> budget unit with a new stack or flue for which construction is**  
16                  **completed after the applicable deadline under subparagraph (i), (ii), (iii), (iv), (v),**  
17                  **OR (vi) or §§ 145.80–145.88 AND THAT REPORTS ON AN ANNUAL**  
18                  **BASIS UNDER § 145.72(d), 90 days after the date on which emissions first exit**  
19                  **to the atmosphere through the new stack or flue.**

20  
21                  **(viii) FOR THE OWNER OR OPERATOR OF A NO<sub>x</sub> BUDGET UNIT**  
22                  **THAT HAS A NEW STACK OR FLUE FOR WHICH CONSTRUCTION**  
23                  **IS COMPLETED AFTER THE APPLICABLE DEADLINE UNDER**

1           **SUBPARAGRAPH (i), (ii), (iii), (iv), (v), OR (vi) OR §§ 145.80 – 145.88 AND**  
2           **THAT REPORTS ON A CONTROL PERIOD BASIS UNDER**  
3           **§145.72(d)(2)(ii), BY 90 DAYS AFTER THE DATE ON WHICH**  
4           **EMISSIONS FIRST EXIT TO THE ATMOSPHERE THROUGH THE**  
5           **NEW STACK OR FLUE, PROVIDED THAT THIS DATE IS DURING A**  
6           **CONTROL PERIOD. IF THIS DATE DOES NOT OCCUR DURING THE**  
7           **CONTROL PERIOD, THE APPLICABLE DEADLINE IS MAY 1**  
8           **IMMEDIATELY FOLLOWING THIS DATE.**

9  
10           **(ix) [(vi)]** For a unit for which an application for a NO<sub>x</sub> budget opt-in  
11           **APPROVAL [permit]** is submitted and not denied or withdrawn, the compliance  
12           dates specified under §§ 145.80–145.88.

13  
14           (3) *Reporting data prior to initial certification.* **THE OWNER OR OPERATOR OF A**  
15           **NO<sub>x</sub> BUDGET UNIT UNDER SUBPARAGRAPHS (2)(iii), (2)(iv), (2)(v), OR (2)(vi)**  
16           **SHALL DETERMINE, RECORD AND REPORT NO<sub>x</sub> MASS EMISSIONS, HEAT**  
17           **INPUT RATE, AND ANY OTHER VALUES REQUIRED TO DETERMINE NO<sub>x</sub>**  
18           **MASS EMISSIONS (E.G., NO<sub>x</sub> EMISSION RATE AND HEAT INPUT RATE, OR**  
19           **NO<sub>x</sub> CONCENTRATION AND STACK FLOW RATE) IN ACCORDANCE WITH**  
20           **40 CFR § 75.70(g), FROM THE DATE AND HOUR THAT THE UNIT STARTS**  
21           **OPERATING UNTIL THE DATE AND HOUR ON WHICH THE CONTINUOUS**  
22           **EMISSION MONITORING SYSTEM, EXCEPTED MONITORING SYSTEM**  
23           **UNDER 40 CFR PART 75 APPENDIX D OR E, OR EXCEPTED MONITORING**

1 **SYSTEM UNDER 40 CFR § 75.19 IS PROVISIONALLY CERTIFIED.**

2  
3 **[(i) The owner or operator of a NO<sub>x</sub> budget unit that misses the certification**  
4 **deadline under paragraph (2)(i) is not eligible to apply for early reduction**  
5 **credits. The owner or operator of the unit becomes subject to the**  
6 **certification deadline under paragraph (2)(i).**

7  
8 **(ii) The owner or operator of a NO<sub>x</sub> budget unit under paragraph (2)(iii) or**  
9 **(iv) shall determine, record and report NO<sub>x</sub> mass, heat input (if required for**  
10 **purposes of allocations) and any other values required to determine NO<sub>x</sub>**  
11 **Mass—for example, NO<sub>x</sub> emission rate and heat input or NO<sub>x</sub> concentration**  
12 **and stack flow—using the provisions of 40 CFR 75.70(g) (relating to NO<sub>x</sub> mass**  
13 **emissions provisions), from the date and hour that the unit starts operating**  
14 **until all required certification tests are successfully completed.]**

15  
16 **(4) Prohibitions.**

17  
18 **(i) An owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit**  
19 **[monitored under 40 CFR 75.72(b)(2)(ii)] may not use an alternative**  
20 **monitoring system, alternative reference method or another alternative for the**  
21 **required continuous emission monitoring system without having obtained prior**  
22 **written approval in accordance with § 145.75.**

1 (ii) An owner or operator of an NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit  
2 **[monitored under 40 CFR 75.72(b)(2)(ii)]** may not operate the unit so as to  
3 discharge, or allow to be discharged, NO<sub>x</sub> emissions to the atmosphere without  
4 accounting for these emissions in accordance with the applicable provisions of  
5 this subchapter and 40 CFR Part 75 except as provided for in 40 CFR 75.74  
6 (relating to annual and ozone season monitoring and reporting requirements).  
7

8 (iii) An owner or operator of an NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit  
9 **[monitored under 40 CFR 75.72(b)(2)(ii)]** may not disrupt the continuous  
10 emission monitoring system, a portion thereof or another approved emission  
11 monitoring method, and thereby avoid monitoring and recording NO<sub>x</sub> mass  
12 emissions discharged into the atmosphere, except for periods of recertification or  
13 periods when calibration, quality assurance testing or maintenance is performed in  
14 accordance with the applicable provisions of this subchapter and 40 CFR Part 75  
15 except as provided for in 40 CFR 75.74.  
16

17 (iv) An owner or operator of an NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit  
18 **[monitored under 40 CFR 75.72(b)(2)(ii)]** may not retire or permanently  
19 discontinue use of the continuous emission monitoring system, any component  
20 thereof, or any other approved emission monitoring system under this subchapter,  
21 except under one of the following circumstances:  
22

23 (A) During the period that the unit is covered by AN **[a retired unit]**

1 exemption under §§ 145.4(b) OR 145.5 (relating to APPLICABILITY  
2 AND retired unit exemption) that is in effect.

3  
4 (B) The owner or operator is monitoring emissions from the unit with  
5 another certified monitoring system approved, in accordance with the  
6 applicable provisions of this subchapter and 40 CFR Part 75, by the  
7 Department for use at that unit that provides emission data for the same  
8 pollutant or parameter as the retired or discontinued monitoring system.

9  
10 (C) The NO<sub>x</sub> authorized account representative submits notification of the  
11 date of certification testing of a replacement monitoring system in  
12 accordance with § 145.71(b)(2).

13  
14 (5) Notwithstanding the provisions of this section and §§ 145.71–145.76, sources that are  
15 also subject to the monitoring provisions of Chapter 139 (relating to sampling and  
16 testing) shall demonstrate compliance with those provisions in addition to the provisions  
17 of this section and §§ 145.71–145.76.

18  
19 **§ 145.71. Initial certification and recertification procedures.**

20  
21 (a) The owner or operator of an NO<sub>x</sub> budget unit that is subject to an acid rain emissions  
22 limitation shall comply with the initial certification and recertification procedures of 40 CFR Part  
23 75 (relating to continuous emission monitoring), except that:

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23

(1) If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR 75.17(a) or (b) (relating to specific provisions for monitoring emissions from common, bypass, and multiple stacks for NO<sub>x</sub> emission rate) for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under 40 CFR 75.66 (relating to petitions to the Administrator) for an alternative to a requirement in 40 CFR 75.17, the NO<sub>x</sub> authorized account representative shall resubmit the petition to the Administrator under § 145.75(a) (relating to petitions) to determine if the approval applies under the NO<sub>x</sub> Budget Trading Program.

(2) For additional CEMS required under the common stack provisions in 40 CFR 75.72 (relating to determination of NO<sub>x</sub> mass emissions), or for NO<sub>x</sub> concentration CEMS used under 40 CFR 75.71(a)(2) (relating to specific provisions for monitoring NO<sub>x</sub> emission rate and heat input for the purpose of calculating NO<sub>x</sub> mass emissions), the owner or operator shall meet the requirements of subsection (b).

(b) The owner or operator of a NO<sub>x</sub> budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, [ **except that the] THE owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 (relating to optional SO<sub>2</sub>, NO<sub>x</sub> and CO<sub>2</sub> emissions calculation for low mass emissions unit) OR THAT QUALIFIES TO USE AN ALTERNATIVE MONITORING SYSTEM UNDER 40 CFR PART 75 SUBPART E (RELATING TO ALTERNATIVE MONITORING SYSTEMS) shall COMPLY WITH**

1 **THE FOLLOWING PROCEDURES, AS MODIFIED BY SUBSECTION (c) OR (d).** [also  
2 **meet the requirements of subsection (c) and the owner or operator of a unit that qualifies to**  
3 **use an alternative monitoring system under 40 CFR Part 75 Subpart E (relating to**  
4 **alternative monitoring systems) shall also meet the requirements of subsection (d).]** The  
5 owner or operator of a NO<sub>x</sub> budget unit that is subject to an acid rain emissions limitation, but  
6 requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a  
7 NO<sub>x</sub> concentration CEMS under 40 CFR 75.71(a)(2) also shall comply with the following initial  
8 certification and recertification procedures:  
9

10 (1) *Requirements for initial certification.* The owner or operator shall ensure that each  
11 monitoring system required by 40 CFR Part 75 Subpart H (relating to NO<sub>x</sub> mass  
12 emissions provisions) (which includes the automated data acquisition and handling  
13 system) successfully completes all of the initial certification testing required under 40  
14 CFR 75.20 (relating to certification and recertification procedures). The owner or  
15 operator shall ensure that the applicable certification tests are successfully completed by  
16 the deadlines specified in § 145.70(2) (relating to general monitoring requirements). In  
17 addition, whenever the owner or operator installs a monitoring system to meet the  
18 requirements of this **SUBCHAPTER [part]** in a location where no monitoring system  
19 was previously installed, initial certification according to 40 CFR 75.20 is required.  
20

21 (2) *Requirements for recertification.* Whenever the owner or operator makes a  
22 replacement, modification or change in a certified monitoring system that **MAY [the**  
23 **Budget Administrator or Department determines]** significantly affect[s] the ability of

1 the system to accurately measure or record NO<sub>x</sub> mass emissions or heat input RATE or  
2 to meet the requirements of 40 CFR 75.21 (relating to quality assurance and quality  
3 control requirements) or 40 CFR Part 75 Appendix B (relating to quality assurance and  
4 quality control), the owner or operator shall recertify the monitoring system according to  
5 40 CFR 75.20(b). Whenever the owner or operator makes a replacement, modification or  
6 change to the flue gas handling system or the unit's operation that MAY [the Budget  
7 Administrator or Department determines to] significantly change the STACK flow or  
8 concentration profile, the owner or operator shall recertify the continuous emissions  
9 monitoring system according to 40 CFR 75.20(b). Examples of changes which require  
10 recertification include: replacement of the analyzer, change in location or orientation of  
11 the sampling probe or site or changing of flow rate monitor polynomial coefficients.

12  
13 *(3) Certification approval process for initial certifications and recertification.*

14  
15 (i) *Notification of certification.* The NO<sub>x</sub> authorized account representative shall  
16 submit to the Department and the appropriate EPA Regional Office a written  
17 notice of the dates of certification in accordance with § 145.73 (relating to  
18 procedures notification).

19  
20 (ii) *Certification application.* The NO<sub>x</sub> authorized account representative shall  
21 submit to the Department AND THE APPROPRIATE EPA REGIONAL  
22 OFFICE a certification application for each monitoring system required under 40  
23 CFR Part 75 Subpart H. A complete certification application shall include the

1 information specified in 40 CFR Part 75 Subpart H.

2  
3 (iii) Except for units using the low mass emission excepted methodology under 40  
4 CFR 75.19, the provisional certification date for a monitor shall be determined  
5 using the procedures set forth in 40 CFR 75.20(a)(3). A provisionally certified  
6 monitor may be used under the NO<sub>x</sub> Budget Trading Program for a period not to  
7 exceed 120 days after receipt by the Department of the complete certification  
8 application for the monitoring system or component thereof under subsection  
9 (b)(3)(ii). Data measured and recorded by the provisionally certified monitoring  
10 system or component thereof, in accordance with the requirements of 40 CFR Part  
11 75, will be considered valid quality-assured data (retroactive to the date and time  
12 of provisional certification), if the Department does not invalidate the provisional  
13 certification by issuing a notice of disapproval **WITHIN 120 DAYS OF**  
14 **RECEIPT OF THE COMPLETE CERTIFICATION APPLICATION BY**  
15 **THE DEPARTMENT.**

16  
17 (iv) *Certification application formal approval process.* The Department will issue  
18 a written notice of approval or disapproval of the certification application to the  
19 owner or operator **WITHIN 120 DAYS** after receipt [**and review**] of the  
20 complete certification application under subparagraph (ii). If the Department does  
21 not issue the notice **WITHIN SUCH 120-DAY PERIOD**, each monitoring  
22 system which meets the applicable performance requirements of 40 CFR Part 75  
23 and is included in the certification application will be deemed certified for use

1 under the NO<sub>x</sub> Budget Trading Program.

2  
3 (A) *Approval notice.* If the certification application is complete and shows  
4 that each monitoring system meets the applicable performance  
5 requirements of 40 CFR Part 75, the Department will issue a written  
6 notice of approval of the certification application **WITHIN 120 DAYS**  
7 **OF RECEIPT.**

8  
9 (B) *Incomplete application notice.* A certification application will be  
10 considered complete when all of the applicable information required to be  
11 submitted under subparagraph (ii) has been received by the Department. If  
12 the certification application is not complete, the Department will issue a  
13 written notice of incompleteness that sets a date by which the NO<sub>x</sub>  
14 authorized account representative must submit the additional information  
15 required to complete the certification application. If the NO<sub>x</sub> authorized  
16 account representative does not comply with the notice of incompleteness  
17 by the specified date, then the Department may issue a notice of  
18 disapproval under clause (C). **THE 120-DAY REVIEW PERIOD**  
19 **SHALL NOT BEGIN PRIOR TO RECEIPT OF A COMPLETE**  
20 **CERTIFICATION APPLICATION.**

21  
22 (C) *Disapproval notice.* If the certification application shows that any  
23 monitoring system or component thereof does not meet the performance

1 requirements of this section and §§ 145.70 and 145.72–145.76, or if the  
2 certification application is incomplete and the requirement for disapproval  
3 under clause (B) has been met, the Department will issue a written notice  
4 of disapproval of the certification application. Upon issuance of the notice  
5 of disapproval, the provisional certification is invalidated by the  
6 Department and the data measured and recorded by each uncertified  
7 monitoring system or component thereof will not be considered valid  
8 quality-assured data beginning with the date and hour of provisional  
9 certification (**AS DEFINED UNDER 40 CFR § 75.20(a)(3)**). The owner  
10 or operator shall follow the procedures for loss of certification in  
11 subparagraph (v) for each monitoring system or component thereof which  
12 is disapproved for initial certification.

13  
14 (D) *Audit decertification.* The Department may issue a notice of  
15 disapproval of the certification status of a monitor in accordance with §  
16 145.72(b) (relating to out of control periods).

17  
18 (v) *Procedures for loss of certification.* If the Department issues a notice of  
19 disapproval of a certification application under subparagraph (iv)(C) or a notice of  
20 disapproval of certification status under subparagraph (iv)(D), the following  
21 apply:

22  
23 (A) The owner or operator shall substitute the following values, for each

1 hour of unit operation during the period of invalid data **SPECIFIED**  
2 **UNDER 40 CFR §§ 75.20(a)(4)(iii), 75.20(b)(5), 75.20(h)(4), OR**  
3 **75.21(e) [beginning with the date and hour of provisional certification]**  
4 and continuing until the time, date and hour specified under 40 CFR  
5 75.20(a)(5)(i):

6  
7 (I) For units using or intending to monitor for NO<sub>x</sub> emission rate  
8 and heat input **RATE** or for units using the low mass emission  
9 excepted methodology under 40 CFR 75.19, the maximum  
10 potential NO<sub>x</sub> emission rate and the maximum potential hourly  
11 heat input of the unit.

12  
13 (II) For units intending to monitor for NO<sub>x</sub> mass emissions using a  
14 NO<sub>x</sub> pollutant concentration monitor and a flow monitor, the  
15 maximum potential concentration of NO<sub>x</sub> and the maximum  
16 potential flow rate of the unit under 40 CFR Part 75 Appendix A  
17 Section **2** [2.1] (relating to instrument span).

18  
19 (B) The NO<sub>x</sub> authorized account representative shall submit a notification  
20 of certification retest dates and a new certification application in  
21 accordance with subparagraphs (i) and (ii).

22  
23 (C) The owner or operator shall repeat all certification tests or other

1 requirements that were failed by the monitoring system, as indicated in the  
2 Department's notice of disapproval, within 30 unit operating days after the  
3 date of issuance of the notice of disapproval.  
4

5 (c) This subsection applies to initial certification and recertification procedures for low mass  
6 emission units using the excepted methodologies under 40 CFR 75.19. The owner or operator of  
7 a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR  
8 75.19 **AND NOT SUBJECT TO AN ACID RAIN EMISSION LIMITATION** shall meet the  
9 applicable general operating requirements of 40 CFR 75.10 (relating to general operating  
10 requirements) **AND** [,] the applicable requirements of 40 CFR 75.19. [, and the applicable  
11 certification requirements of § 145.71,] **THE OWNER OR OPERATOR OF SUCH A**  
12 **UNIT SHALL ALSO MEET THE APPLICABLE CERTIFICATION AND**  
13 **RECERTIFICATION PROCEDURES OF SUBSECTION (b)**, except that the excepted  
14 methodology shall be deemed provisionally certified for use under the NO<sub>x</sub> Budget Trading  
15 Program, as of one of the following dates:  
16

17 (i) **FOR A UNIT THAT DOES NOT HAVE MONITORING EQUIPMENT**  
18 **INITIALLY CERTIFIED OR RECERTIFIED FOR THE NO<sub>x</sub> BUDGET**  
19 **TRADING PROGRAM AS OF THE DATE ON WHICH THE NO<sub>x</sub>**  
20 **AUTHORIZED ACCOUNT REPRESENTATIVE SUBMITS THE**  
21 **CERTIFICATION APPLICATION UNDER 40 CFR § 75.19, STARTING ON THE**  
22 **DATE OF SUCH SUBMISSION UNTIL THE COMPLETION OF THE PERIOD**  
23 **FOR THE DEPARTMENT'S REVIEW.** [For a unit that commences operation

1 before its compliance deadline under subsection (b), from January 1 of the year  
2 following submission of the certification application for approval to use the low  
3 mass emissions excepted methodology under 40 CFR 75.19 until the completion of  
4 the period for the Department review.]

5  
6 **(ii) FOR A UNIT THAT HAS MONITORING EQUIPEMENT INITIALLY**  
7 **CERTIFIED OR RECERTIFIED FOR THE NO<sub>x</sub> BUDGET TRADING**  
8 **PROGRAM AS OF THE DATE ON WHICH THE NO<sub>x</sub> AUTHORIZED**  
9 **ACCOUNT REPRESENTATIVE SUBMITS THE CERTIFICATION**  
10 **APPLICATION UNDER 40 CFR § 75.19 FOR THE UNIT AND THAT REPORTS**  
11 **DATA ON AN ANNUAL BASIS UNDER § 145.74(d), STARTING JANUARY 1 OF**  
12 **THE YEAR AFTER THE YEAR OF SUCH SUBMISSION UNTIL THE**  
13 **COMPLETION OF THE PERIOD FOR THE DEPARTMENT'S REVIEW.** [For a  
14 unit that commences operation after its compliance deadline under subsection (b),  
15 the date of submission of the certification application for approval to use the low  
16 mass emissions excepted methodology under 40 CFR 75.19 until the completion of  
17 the period for Department review.]

18  
19 **(iii) FOR A UNIT THAT HAS MONITORING EQUIPMENT INITIALLY**  
20 **CERTIFIED OR RECERTIFIED FOR THE NO<sub>x</sub> BUDGET TRADING**  
21 **PROGRAM AS OF THE DATE ON WHICH THE NO<sub>x</sub> AUTHORIZED**  
22 **ACCOUNT REPRESENTATIVE SUBMITS THE CERTIFICATION**  
23 **APPLICATION UNDER 40 CFR §75.19 FOR THE UNIT AND THAT REPORTS**

1            **ON A CONTROL SEASON BASIS UNDER § 145.74(d), STARTING MAY 1 OF**  
2            **THE CONTROL PERIOD AFTER THE YEAR OF SUCH SUBMISSION UNTIL**  
3            **THE COMPLETION OF THE PERIOD FOR THE DEPARTMENT'S REVIEW.**  
4

5 (d) This subsection applies to certification/recertification procedures for alternative monitoring  
6 systems. The NO<sub>x</sub> authorized account representative representing the owner or operator of each  
7 unit **NOT SUBJECT TO AN ACID RAIN EMISSIONS LIMITATION** applying to monitor  
8 using an alternative monitoring system approved by the **NO<sub>x</sub>** Budget Administrator under 40  
9 CFR Part 75 Subpart E (relating to alternative monitoring systems) shall apply for certification to  
10 the Department prior to use of the system under the NO<sub>x</sub> Trading Program. The NO<sub>x</sub> authorized  
11 account representative shall apply for recertification following a replacement, modification or  
12 change according to the procedures in subsection (b). The owner or operator of an alternative  
13 monitoring system shall comply with the notification and application requirements for  
14 certification according to the procedures specified in subsection (b)[(3)] and 40 CFR 75.20(f).

15  
16 **§ 145.72. Out of control periods.**  
17

18 (a) *Quality assurance requirements.* Whenever a monitoring system fails to meet the quality  
19 assurance **OR DATA VALIDATION** requirements of 40 CFR Part 75 [**Appendix B**] (relating  
20 to quality assurance and quality control procedures), data shall be substituted using the  
21 applicable procedures in 40 CFR Part 75 Subpart D, Appendix D or Appendix E (relating to  
22 missing data substitution procedures; optional SO<sub>2</sub> emissions data protocol for gas-fired and oil-  
23 fired units; and optional NO<sub>x</sub> emissions estimation protocol for gas-fired peaking units and oil-

1 fired peaking units).

2

3 (b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the  
4 initial certification or recertification application reveal that any system or component should not  
5 have been certified or recertified because it did not meet a particular performance specification  
6 or other requirement under § 145.71 (relating to initial certification and recertification  
7 procedures) or the applicable provisions of 40 CFR Part 75, both at the time of the initial  
8 certification or recertification application submission and at the time of the audit, the Department  
9 will issue a notice of disapproval of the certification status of the system or component. For the  
10 purposes of this subsection, an audit shall be either a field audit or an audit of any information  
11 submitted to the Department or the Administrator. By issuing the notice of disapproval, the  
12 Department revokes prospectively the certification status of the system or component. The data  
13 measured and recorded by the system or component will not be considered valid quality-assured  
14 data from the date of issuance of the notification of the revoked certification status until the date  
15 and time that the owner or operator completes subsequently approved initial certification or  
16 recertification tests. The owner or operator shall follow the initial certification or recertification  
17 procedures in § 145.71 for each disapproved system.

18

19 **§ 145.73. Notifications.**

20

21 The NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit shall submit written notice to  
22 the Department and the Administrator in accordance with 40 CFR 75.61 (relating to  
23 notification), except that if the unit is not subject to an acid rain emissions limitation, the

1 notification is only required to be sent to the Department.

2  
3 **§ 145.74. Recordkeeping and reporting.**

4  
5 *(a) General provisions.*

6  
7 (1) In addition to the requirements of Chapter 127 (relating to construction, modification,  
8 reactivation and operation of sources), the NO<sub>x</sub> authorized account representative shall  
9 comply with the recordkeeping and reporting requirements in this section and with the  
10 requirements of § 145.10(e) (relating to authorization and responsibilities of the NO<sub>x</sub>  
11 authorized account representative).

12  
13 (2) If the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit subject to an acid  
14 rain emission limitation who signed and certified any submission that is made under 40  
15 CFR Part 75 Subpart F or G (relating to recordkeeping requirements; and reporting  
16 requirements) and which includes data and information required under this subchapter or  
17 40 CFR Part 75 Subpart H (relating to NO<sub>x</sub> mass emissions provisions) is not the same  
18 person as the designated representative or the alternative designated representative for the  
19 unit under 40 CFR Part 72 (relating to permits regulation), the submission shall also be  
20 signed by the designated representative or the alternative designated representative.

21  
22 *(b) Monitoring plans.*

1 (1) The owner or operator of a unit subject to an acid rain emissions limitation shall  
2 comply with requirements of 40 CFR 75.62 (relating to monitoring plan), except that the  
3 monitoring plan shall also include all of the information required by 40 CFR Part 75  
4 Subpart H.

5  
6 (2) The owner or operator of a unit that is not subject to an acid rain emissions limitation  
7 shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only  
8 required to include the information required by 40 CFR Part 75 Subpart H.

9  
10 (c) *Certification applications.* The NO<sub>x</sub> authorized account representative shall submit an  
11 application to the Department within 45 days after completing all initial certification or  
12 recertification tests required under § 145.71 (relating to initial certification and recertification  
13 procedures) including the information required under 40 CFR Part 75 Subpart H.

14  
15 (d) *Quarterly reports.* The NO<sub>x</sub> authorized account representative shall submit quarterly reports,  
16 as follows:

17  
18 (1) NO<sub>x</sub> budget units **SUBJECT TO AN ACID RAIN EMISSION LIMITATION**  
19 shall meet the annual reporting requirements of this subchapter. The NO<sub>x</sub> authorized  
20 account representative shall submit a quarterly report for each calendar quarter beginning  
21 with one of the following:

22  
23 (i) For units that elect to comply with the early reduction credit provisions under §

1           **145.43 [145.55]** (relating to banking), the calendar quarter that includes the date  
2 of initial provisional certification under §§ 145.71(b)(3)(iii) **OR 145.71(c)**. Data  
3 shall be **RECORDED AND** reported from the date and hour corresponding to the  
4 date and hour of provisional certification.

5  
6           (ii) For units commencing operation **ON OR BEFORE** [prior to] May 1, 2002  
7 **AND THAT IS NOT SUBJECT TO SUBPARAGRAPH (d)(1)(i)**, [that are  
8 **not required to certify monitors by May 1, 2000, under § 145.70(2)(i)**  
9 **(relating to general monitoring requirements),**] the earlier of the calendar  
10 quarter that includes the date of initial provisional certification under §§  
11 145.71(b)(3)(iii) or **145.71(c)** **OR**, if the certification tests are not completed by  
12 May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30,  
13 2002. Data shall be recorded and reported from the earlier of the date and hour  
14 corresponding to the date and hour of provisional certification or the first hour on  
15 May 1, 2002.

16  
17           (iii) For a unit that commences operation after May 1, 2002, the calendar quarter  
18 in which the unit commences operation. Data shall be reported from the date and  
19 hour corresponding to when the unit commenced operation.

20  
21           **(2) IF A NO<sub>x</sub> BUDGET UNIT IS NOT SUBJECT TO AN ACID RAIN EMISSION**  
22 **LIMITATION, THEN THE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE**  
23 **SHALL DO EITHER OF THE FOLLOWING:**

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23

**(i) MEET ALL THE REQUIREMENTS OF 40 CFR PART 75 RELATED TO MONITORING AND REPORTING NO<sub>x</sub> MASS EMISSIONS DURING THE ENTIRE YEAR AND MEET THE REPORTING DEADLINES SPECIFIED IN PARAGRAPH (d)(1).**

**(ii) SUBMIT QUARTERLY REPORTS COVERING THE PERIOD MAY 1 THROUGH SEPTEMBER 30 OF EACH YEAR AND INCLUDING THE DATA DESCRIBED IN 40 CFR § 75.74(c)(6). THE NO<sub>x</sub> AUTHORIZED ACCOUNT REPRESENTATIVE SHALL SUBMIT A QUARTERLY REPORT FOR EACH CALENDAR QUARTER BEGINNING WITH:**

**(A) FOR UNITS THAT INTEND TO APPLY OR APPLIES FOR EARLY REDUCTION CREDITS UNDER SECTION 145.43 (RELATED TO COMPLIANCE SUPPLEMENT POOL), THE CALENDAR QUARTER THAT INCLUDES THE DATE OF INITIAL PROVISIONAL CERTIFICATION UNDER SECTIONS 145.71(b)(3)(iii) (RELATED TO INITIAL CERTIFICATION AND RECERTIFICATION PROCEDURES) AND 145.71(c). DATA SHALL BE RECORDED AND REPORTED FROM THE DATE AND HOUR OF PROVISIONAL CERTIFICATION; OR**

**(B) FOR UNITS COMMENCING OPERATION ON OR BEFORE**

1 MAY 1, 2002 AND THAT IS NOT SUBJECT TO SUBSECTION  
2 (d)(2)(i), THE CALENDAR QUARTER COVERING MAY 1  
3 THROUGH JUNE 30, 2002. DATA SHALL BE RECORDED AND  
4 REPORTED FROM THE EARLIER OF THE DATE AND HOUR  
5 CORRESPONDING TO THE DATE AND HOUR OF INITIAL  
6 PROVISIONAL CERTIFICATION UNDER §§ 145.71(b)(3)(iii) OR  
7 145.71(c) OR THE FIRST HOUR OF MAY 1, 2002; OR

8  
9 (C) FOR UNITS THAT COMMENCE OPERATION AFTER MAY  
10 1, 2002 AND DURING A CONTROL PERIOD, THE CALENDAR  
11 QUARTER IN WHICH THE UNIT COMMENCES OPERATION.  
12 DATA SHALL BE REPORTED FROM THE DATE AND HOUR  
13 CORRESPONDING TO WHEN THE UNIT COMMENCED  
14 OPERATION; OR

15  
16 (D) FOR UNITS THAT COMMENCE OPERATION AFTER MAY  
17 1, 2002 AND NOT DURING A CONTROL PERIOD, THE  
18 CALENDAR QUARTER COVERING THE FIRST CONTROL  
19 PERIOD AFTER THE UNIT COMMENCES OPERATION. DATA  
20 SHALL BE REPORTED FROM THE EARLIER OF THE DATE  
21 AND HOUR CORRESPONDING TO THE DATE AND HOUR OF  
22 INITIAL PROVISIONAL CERTIFICATION UNDER §§  
23 145.71(b)(3)(iii) OR 145.71(c) OR THE FIRST HOUR OF MAY 1 OF

1                                   **THE FIRST CONTROL PERIOD AFTER THE UNIT**  
2                                   **COMMENCES OPERATION.**

3  
4       **(3) [(2)]** The NO<sub>x</sub> authorized account representative shall submit each quarterly report to  
5       the Department and NO<sub>x</sub> Budget Administrator within 30 days following the end of the  
6       calendar quarter covered by the report. Quarterly reports shall be submitted in the manner  
7       specified in 40 CFR Part 75 Subpart H and 40 CFR 75.64 (relating to quarterly reports).

8  
9                   (i) For units subject to an acid rain emissions limitation, quarterly reports shall  
10                  include all of the data and information required in 40 CFR Part 75 Subpart H for  
11                  each NO<sub>x</sub> budget unit (or group of units using a common stack) as well as  
12                  information required in 40 CFR Part 75 Subpart G (relating to reporting  
13                  requirements).

14  
15                  (ii) For units not subject to an acid rain emissions limitation, quarterly reports are  
16                  only required to include all of the data and information required in 40 CFR Part  
17                  75 Subpart H for each NO<sub>x</sub> budget unit (or group of units using a common stack).

18  
19       **(4) [(3)]** The NO<sub>x</sub> authorized account representative shall submit to the Department and  
20       NO<sub>x</sub> Budget Administrator a compliance certification in support of each quarterly report  
21       based on reasonable inquiry of those persons with primary responsibility for ensuring that  
22       all of the unit's emissions are correctly and fully monitored. The certification shall state  
23       that the following conditions have been met:

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23

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subchapter and 40 CFR Part 75, including the quality assurance procedures and specifications.

(ii) For a unit with add-on NO<sub>x</sub> emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1) (relating to units with add-on emission controls), the add-on emission controls were operating within the range of parameters listed in the QUALITY ASSURANCE/QUALITY CONTROL PROGRAM UNDER 40 CFR PART 75 APPENDIX B [monitoring plan] and the substitute values do not systematically underestimate NO<sub>x</sub> emissions.

(iii) For a unit that is reporting on a control period basis under **[this]** subsection **(d)(2)(ii)**, the NO<sub>x</sub> emission rate and NO<sub>x</sub> concentration values substituted for missing data under 40 CFR Part 75 Subpart D (relating to missing data substitution procedures) are calculated using only values from a control period and do not systematically underestimate NO<sub>x</sub> emissions.

**§ 145.75. Petitions.**

(a) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit **[that is subject to an acid rain emissions limitation]** may submit a petition under 40 CFR § 75.66 (relating to petitions to the Administrator) to the Administrator requesting approval to apply an alternative to any

1 requirement of this section and §§ 145.70–145.74 and 145.76.

2  
3 **(b) [(1)]** Application of an alternative to any requirement of this section and §§ 145.70–145.74  
4 and 145.76 is in accordance with this section and §§ 145.70 – 145.74 AND 145.76 only to the  
5 extent that the petition is approved by the Administrator UNDER 40 CFR § 75.66.

6  
7 **[(2) Notwithstanding paragraph (1), if the petition requests approval to apply an**  
8 **alternative to a requirement concerning any additional CEMS required under the**  
9 **common stack provisions of 40 CFR 75.72 (relating to determination of NO<sub>x</sub> mass**  
10 **emissions), the petition is governed by subsection (b).**

11  
12 **(b) The NO<sub>x</sub> authorized account representative of an NO<sub>x</sub> budget unit that is not subject to**  
13 **an acid rain emissions limitation may submit a petition under 40 CFR 75.66 (relating to**  
14 **petitions to the Administrator) to the Department and the Administrator requesting**  
15 **approval to apply an alternative to any requirement of this section and §§ 145.70–145.74**  
16 **and 145.76.**

17  
18 **(1) The NO<sub>x</sub> authorized account representative of an NO<sub>x</sub> budget unit that is subject**  
19 **to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to**  
20 **the Department and the Administrator requesting approval to apply an alternative**  
21 **to a requirement concerning any additional CEMS required under the common**  
22 **stack provisions of 40 CFR 75.72 or a NO<sub>x</sub> concentration CEMS used under 40 CFR**  
23 **75.71(a)(2) (relating to specific provisions for monitoring NO<sub>x</sub> emission rate and**



1 A unit that is not a NO<sub>x</sub> budget unit under § 145.4(a) (relating to applicability), **IS NOT A UNIT**  
2 **EXEMPT UNDER § 145.4(b)**, vents all of its emissions to a stack, and is operating, may  
3 qualify, under this section and §§ 145.81–145.88 (relating to opt-in process), to become a NO<sub>x</sub>  
4 budget opt-in source. A unit that is an NO<sub>x</sub> budget unit **UNDER § 145.4(a)**, is covered by a  
5 retired unit exemption under §§ **145.4(b) OR** 145.5 (relating to retired unit exemption) that is in  
6 effect, or is not operating is not eligible to become an NO<sub>x</sub> budget opt-in **UNIT [source]**.

7

8 **§ 145.81. Opt-in source general provisions.**

9

10 Except as otherwise provided, a NO<sub>x</sub> budget opt-in **UNIT [source]** shall be treated as a NO<sub>x</sub>  
11 budget unit for purposes of applying §§ 145.1–145.76.

12

13 **§ 145.82. NO<sub>x</sub> authorized account representative for opt-in sources.**

14

15 A unit for which an application for an NO<sub>x</sub> budget opt-in **APPROVAL [permit]** is submitted  
16 **[and not denied or withdrawn]**, or an NO<sub>x</sub> budget opt-in **UNIT [source]**, located at the same  
17 source as one or more NO<sub>x</sub> budget units, shall have the same NO<sub>x</sub> authorized account  
18 representative as the NO<sub>x</sub> budget units.

19

20 **§ 145.83. Applying for an NO<sub>x</sub> budget opt-in APPROVAL [permit].**

21

22 To apply for **A [an initial]** NO<sub>x</sub> budget opt-in **APPROVAL [permit]**, the NO<sub>x</sub> authorized  
23 account representative of a unit qualified under § 145.80 (relating to applicability for opt-in

1 sources) may submit the following to the Department at any time, except as provided under §  
2 145.86(g) (relating to opt-in source withdrawal from NO<sub>x</sub> budget trading program):

3  
4 (1) A complete NO<sub>x</sub> budget OPT-IN APPROVAL [permit] application [under § 145.22  
5 (relating to information requirements for NO<sub>x</sub> budget permit applications)]

6 CONTAINING THE FOLLOWING:

7  
8 (i) IDENTIFICATION OF THE SOURCE, INCLUDING PLANT NAME  
9 AND THE ORIS (OFFICE OF REGULATORY INFORMATION  
10 SYSTEMS) OR FACILITY CODE ASSIGNED TO THE SOURCE BY THE  
11 ENERGY INFORMATION ADMINISTRATION, IF APPLICABLE.

12  
13 (ii) IDENTIFICATION OF EACH OPT-IN UNIT AT THE SOURCE.

14  
15 (iii) THE STANDARD REQUIREMENTS UNDER § 145.6 (RELATING TO  
16 STANDARD REQUIREMENTS).

17  
18 (iv) THE FOLLOWING CERTIFICATION STATEMENTS BY THE NO<sub>x</sub>  
19 AUTHORIZED ACCOUNT REPRESENTATIVE:

20  
21 (A) "I CERTIFY THAT EACH UNIT FOR WHICH THIS  
22 APPLICATION IS SUBMITTED UNDER §§ 145.80-145.88 IS NOT

1                   **A NO<sub>x</sub> BUDGET UNIT UNDER § 145.4 AND IS NOT COVERED**  
2                   **BY A RETIRED UNIT EXEMPTION UNDER § 145.5 THAT IS IN**  
3                   **EFFECT.”**

4  
5                   **(B) IF THE APPLICATION IS FOR AN INITIAL NO<sub>x</sub> BUDGET**  
6                   **OPT-IN APPROVAL, “I CERTIFY THAT EACH UNIT FOR**  
7                   **WHICH THIS APPROVAL APPLICATION IS SUBMITTED**  
8                   **UNDER §§ 145.80 – 145.88 IS CURRENTLY OPERATING, AS**  
9                   **THAT TERM IS DEFINED UNDER § 145.2.”**

10  
11                   (2) A monitoring plan submitted in accordance with §§ 145.70–145.76 (relating to  
12                   recordkeeping and reporting requirements).

13  
14                   (3) A complete account certificate of representation under § 145.13 (relating to account  
15                   certificate of representation), if no NO<sub>x</sub> authorized account representative has been  
16                   previously designated for the unit.

17  
18                   **§ 145.84. Opt-in process.**

19  
20                   The Department will issue or deny a NO<sub>x</sub> budget opt-in **APPROVAL** [permit] for a unit for  
21                   which an [initial] application for a NO<sub>x</sub> budget opt-in **APPROVAL** [permit] under § 145.83  
22                   (relating to applying for an NO<sub>x</sub> budget opt-in **APPROVAL** [permit]) is submitted, in  
23                   accordance with [§ 145.20 (relating to general NO<sub>x</sub> budget trading program permit

1 **requirements) and] the following:**

2  
3 (1) *Interim review of monitoring plan.* The Department will determine, on an interim  
4 basis, the sufficiency of the monitoring plan accompanying the initial application for an  
5 NO<sub>x</sub> budget opt-in **APPROVAL** [permit] under § 145.83. A monitoring plan is  
6 sufficient, for purposes of interim review, if the plan appears to contain information  
7 demonstrating that the NO<sub>x</sub> emissions rate and heat input **RATE** of the unit are  
8 monitored and reported in accordance with §§ 145.70–145.76 (relating to recordkeeping  
9 and reporting requirements). A determination of sufficiency will not be construed as  
10 acceptance or approval of the unit's monitoring plan.

11  
12 (2) *Plan sufficiency.* If the Department determines that the unit's monitoring plan is  
13 sufficient under paragraph (1) and after completion of monitoring system certification  
14 under §§ 145.70–145.76, the NO<sub>x</sub> emissions rate and the heat input of the unit shall be  
15 monitored and reported in accordance with §§ 145.70–145.76 for one full control period  
16 during which monitoring system availability is not less than 90% and during which the  
17 unit is in compliance with any applicable State or Federal NO<sub>x</sub> emissions or emissions-  
18 related requirements. Solely for purposes of applying this requirement, the unit shall be  
19 treated as an NO<sub>x</sub> budget unit prior to issuance of a NO<sub>x</sub> budget opt-in **APPROVAL**  
20 **[permit]** covering the unit.

21  
22 (3) *Base line heat rate.* Based on the information monitored and reported under paragraph  
23 (2), the unit's baseline heat rate shall be calculated as the unit's total heat input (in

1 mmBtu) for the control period and the unit's baseline NO<sub>x</sub> emissions rate shall be  
2 calculated as the unit's total NO<sub>x</sub> mass emissions (in POUNDS [lb]) for the control  
3 period divided by the unit's baseline heat INPUT [rate].  
4

5 **(4) PROPOSED APPROVAL [Draft permit]**. After calculating the baseline heat input  
6 and the baseline NO<sub>x</sub> emissions rate for the unit under paragraph (3), the Department will  
7 **PROPOSE APPROVAL OF THE APPLICATION [issue a draft NO<sub>x</sub> budget opt-in**  
8 **permit to the NO<sub>x</sub> authorized account representative of the unit]**.  
9

10 **[(5) *Confirmation of intention to opt-in*. Within 20 days after the issuance of the draft**  
11 **NO<sub>x</sub> budget opt-in permit, the NO<sub>x</sub> authorized account representative of the unit**  
12 **shall submit to the Department a confirmation of the intention to opt in the unit or a**  
13 **withdrawal of the application for a NO<sub>x</sub> budget opt-in permit under § 145.83. The**  
14 **Department will treat the failure to make a timely submission as a withdrawal of the**  
15 **NO<sub>x</sub> budget opt-in permit application.]**  
16

17 **(5) [(6) Issuance [of draft] NO<sub>x</sub> budget opt-in APPROVAL [permit]**. [If the NO<sub>x</sub>  
18 **authorized account representative confirms the intention to opt in the unit under**  
19 **paragraph (5), the] THE Department will issue the [draft] NO<sub>x</sub> budget opt-in**  
20 **APPROVAL IF THE UNIT MEETS ALL THE APPLICABLE REQUIRMENTS**  
21 **OF THIS SUBCHAPTER [permit] [in accordance with § 145.20]**.  
22

23 **(6) [(7) Nonqualification of unit**. Notwithstanding paragraphs (1)– **(5) [(6)]**, if at any

1 time before issuance of a [draft] NO<sub>x</sub> budget opt-in APPROVAL [permit] for the unit,  
2 the Department determines that the unit does not qualify as an NO<sub>x</sub> budget opt-in source  
3 under § 145.80 (relating to applicability for opt-in sources), the Department will issue a  
4 [draft] denial of an NO<sub>x</sub> budget opt-in APPROVAL [permit] for the unit [in  
5 accordance with § 145.20].  
6

7 ~~(7)~~ [(8)] *Withdrawal of application for an NO<sub>x</sub> budget opt-in APPROVAL [permit].* A  
8 NO<sub>x</sub> authorized account representative of a unit may withdraw its application for a NO<sub>x</sub>  
9 budget opt-in APPROVAL [permit] under § 145.83 at any time prior to the issuance of  
10 the final NO<sub>x</sub> budget opt-in APPROVAL [permit]. Once the application for a NO<sub>x</sub>  
11 budget opt-in APPROVAL [permit] is withdrawn, a NO<sub>x</sub> authorized account  
12 representative wanting to reapply shall submit a new application for a NO<sub>x</sub> Budget OPT-  
13 IN APPROVAL [permit] under § 145.83.  
14

15 ~~(8)~~ [(9)] *Effective date.* The effective date of the initial NO<sub>x</sub> budget opt-in APPROVAL  
16 [permit] is May 1 of the first control period starting after the issuance of the initial NO<sub>x</sub>  
17 budget opt-in APPROVAL [permit] by the Department. The unit shall be a NO<sub>x</sub> budget  
18 opt-in source and a NO<sub>x</sub> budget unit as of the effective date of the initial NO<sub>x</sub> budget opt-  
19 in APPROVAL [permit].  
20

21 **§ 145.85. NO<sub>x</sub> budget opt-in APPLICATION [permit] contents.**  
22

23 (a) Each NO<sub>x</sub> budget opt-in APPROVAL [permit] will contain all elements required for a

1 complete NO<sub>x</sub> budget opt-in APPROVAL [permit] application under § 145.83 (RELATING  
2 TO APPLYING FOR AN NO<sub>x</sub> BUDGET OPT-IN APPROVAL) [145.22 (relating to  
3 **information requirements for NO<sub>x</sub> budget permit applications**)].

4  
5 (b) Each NO<sub>x</sub> budget opt-in APPROVAL [permit] shall incorporate the requirements of this  
6 subchapter.

7  
8 **§ 145.86. Opt-in source withdrawal from NO<sub>x</sub> budget trading program.**

9  
10 (a) *Requesting withdrawal.* To withdraw from the NO<sub>x</sub> Budget Trading Program, the NO<sub>x</sub>  
11 authorized account representative of a NO<sub>x</sub> budget opt-in UNIT [source] shall submit to the  
12 Department a request to withdraw effective as of a specified date prior to May 1 or after  
13 September 30. The submission shall be made no later than 90 days prior to the requested  
14 effective date of withdrawal.

15  
16 (b) *Conditions for withdrawal.* Before a NO<sub>x</sub> budget opt-in source covered by a request under  
17 subsection (a) may withdraw from the NO<sub>x</sub> Budget Trading Program and the NO<sub>x</sub> budget opt-in  
18 APPROVAL [permit] may be terminated under subsection (e), the following conditions shall  
19 be met:

20  
21 (1) For the control period immediately before the withdrawal is to be effective, the NO<sub>x</sub>  
22 authorized account representative must submit or must have submitted to the Department  
23 an annual compliance certification report in accordance with § 145.30 (relating to

1 compliance certification report).

2  
3 (2) If the NO<sub>x</sub> budget opt-in UNIT [source] has excess emissions for the control period  
4 immediately before the withdrawal is to be effective, the NO<sub>x</sub> Budget Administrator will  
5 deduct or has deducted from the NO<sub>x</sub> budget opt-in UNIT'S [source's] compliance  
6 account, or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in  
7 UNIT [source] is located, the full amount required under § 145.54(d) (relating to  
8 compliance) for the control period.

9  
10 (3) After the requirements for withdrawal under paragraphs (1) and (2) are met, the NO<sub>x</sub>  
11 Budget Administrator will deduct from the NO<sub>x</sub> budget opt-in UNIT'S [source's]  
12 compliance account, or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub>  
13 budget opt-in UNIT [source] is located, NO<sub>x</sub> allowances equal in number to and  
14 allocated for the same or a prior control period as any NO<sub>x</sub> allowances allocated to that  
15 source under § 145.88 (relating to NO<sub>x</sub> allowance allocations to opt-in units) for any  
16 control period for which the withdrawal is to be effective. The NO<sub>x</sub> BUDGET  
17 Administrator will close the NO<sub>x</sub> budget opt-in UNIT'S [source's] compliance account  
18 **[and will establish,]** and transfer any remaining allowances to[, ] a new general account  
19 **SPECIFIED BY [for]** the owners and operators of the NO<sub>x</sub> budget opt-in UNIT  
20 **[source]. [The NO<sub>x</sub> authorized account representative for the NO<sub>x</sub> budget opt-in**  
21 **source shall become the NO<sub>x</sub> authorized account representative for the general**  
22 **account.]**

1 (c) *Withdrawal from program.* A NO<sub>x</sub> budget opt-in UNIT [source] that withdraws from the  
2 NO<sub>x</sub> Budget Trading Program shall comply with the requirements under the NO<sub>x</sub> Budget Trading  
3 Program concerning all years for which the NO<sub>x</sub> budget opt-in UNIT [source] was a NO<sub>x</sub> budget  
4 opt-in UNIT [source], even if the requirements arise or must be complied with after the  
5 withdrawal takes effect.

6  
7 (d) *Notification.*

8  
9 (1) After the requirements for withdrawal under subsections (a) and (b) are met (including  
10 deduction of the full amount of NO<sub>x</sub> allowances required), the Department will issue a  
11 notification to the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget opt-in UNIT  
12 [source] of the acceptance of the withdrawal of the NO<sub>x</sub> budget opt-in UNIT [source] as  
13 of a specified effective date that is after the requirements have been met and that is prior  
14 to May 1 or after September 30.

15  
16 (2) If the requirements for withdrawal under subsections (a) and (b) are not met, the  
17 Department will issue a notification to the NO<sub>x</sub> authorized account representative of the  
18 NO<sub>x</sub> budget opt-in UNIT [source] that the NO<sub>x</sub> budget opt-in UNIT'S [source's] request  
19 to withdraw is denied. If the NO<sub>x</sub> budget opt-in UNIT'S [source's] request to withdraw  
20 is denied, the NO<sub>x</sub> budget opt-in UNIT [source] shall remain subject to the requirements  
21 for a NO<sub>x</sub> budget opt-in UNIT [source].

22  
23 (e) *APPROVAL [permit] amendment.* After the Department issues a notification under

1 subsection (d)(1) that the requirements for withdrawal have been met, the Department will revise  
2 the NO<sub>x</sub> budget OPT-IN APPROVAL [permit] covering the NO<sub>x</sub> budget opt-in UNIT [source]  
3 to terminate the NO<sub>x</sub> budget opt-in APPROVAL [permit] as of the effective date specified  
4 under subsection (d)(1). A NO<sub>x</sub> budget opt-in UNIT [source] shall continue to be a NO<sub>x</sub> budget  
5 opt-in UNIT [source] until the effective date of the termination.

6  
7 (f) *Reapplication upon failure to meet conditions of withdrawal.* If the Department denies the  
8 NO<sub>x</sub> budget opt-in source's request to withdraw, the NO<sub>x</sub> authorized account representative may  
9 submit another request to withdraw in accordance with subsections (a) and (b).

10  
11 (g) *Ability to return to the NO<sub>x</sub> Budget Trading Program.* Once a NO<sub>x</sub> budget opt-in UNIT  
12 [source] withdraws from the NO<sub>x</sub> Budget Trading Program and its NO<sub>x</sub> budget opt-in  
13 APPROVAL [permit] is terminated under this section, the NO<sub>x</sub> authorized account  
14 representative may not submit another application for a NO<sub>x</sub> budget opt-in APPROVAL  
15 [permit] under § 145.83 (relating to applying for a NO<sub>x</sub> budget opt-in APPROVAL [permit])  
16 for the unit prior to the date that is 4 years after the date on which the terminated NO<sub>x</sub> budget  
17 opt-in APPROVAL [permit] became effective.

18  
19 **§ 145.87. Opt-in UNIT [source] change in regulatory status.**

20  
21 (a) *Notification.* When a NO<sub>x</sub> budget opt-in UNIT [source] becomes a NO<sub>x</sub> budget unit under §  
22 145.4(a) (relating to applicability), the NO<sub>x</sub> authorized account representative shall notify in  
23 writing the Department and the Administrator of the change in the NO<sub>x</sub> budget opt-in UNIT'S

1 [source's] regulatory status, within 30 days of the change.

2

3 (b) *Department's and NO<sub>x</sub> Budget Administrator's action.*

4

5 (1) *Units with active applications.*

6

7 (i) *Revision of APPROVAL [permit].* When the NO<sub>x</sub> budget opt-in UNIT  
8 [source] becomes a NO<sub>x</sub> budget unit under § 145.4(a), the Department will revise  
9 the NO<sub>x</sub> budget opt-in UNIT'S [source's] NO<sub>x</sub> budget opt-in APPROVAL  
10 [permit] to meet the requirements of THIS SUBCHAPTER [an NO<sub>x</sub> budget  
11 permit under § 145.23 (relating to NO<sub>x</sub> budget permit contents)] as of an  
12 effective date that is the date on which the NO<sub>x</sub> budget opt-in UNIT [source]  
13 becomes an NO<sub>x</sub> budget unit under § 145.4(a).

14

15 (ii) *Compliance account.*

16

17 (A) The NO<sub>x</sub> Budget Administrator will deduct from the compliance  
18 account for the NO<sub>x</sub> budget unit under subparagraph (i), or the overdraft  
19 account of the NO<sub>x</sub> budget source where the unit is located, NO<sub>x</sub>  
20 allowances equal in number to and allocated for the same or a prior  
21 control period as the following:

22

23 (I) NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> budget unit (as a NO<sub>x</sub>

1 budget opt-in UNIT [source] under § 145.88 (relating to NO<sub>x</sub>  
2 allowance allocations to opt-in units) for any control period after  
3 the last control period during which the unit's NO<sub>x</sub> budget opt-in  
4 APPROVAL [permit] was effective.

5  
6 (II) If the effective date of the NO<sub>x</sub> budget APPROVAL [permit]  
7 revision under subparagraph (i) is during a control period, the NO<sub>x</sub>  
8 allowances allocated to the NO<sub>x</sub> budget unit (as a NO<sub>x</sub> budget opt-  
9 in UNIT [source]) under § 145.88 for the control period multiplied  
10 by the **[ratio of the]** number of days, in the control period, starting  
11 with the effective date of the APPROVAL [permit] revision  
12 under subparagraph (i), divided by the total number of days in the  
13 control period **AND ROUNDED TO THE NEAREST WHOLE**  
14 **NUMBER OF NO<sub>x</sub> ALLOWANCES AS APPROPRIATE.**

15  
16 (B) The NO<sub>x</sub> authorized account representative shall ensure that the  
17 compliance account of the NO<sub>x</sub> budget unit under subparagraph (i), or the  
18 overdraft account of the NO<sub>x</sub> budget source where the unit is located,  
19 includes the NO<sub>x</sub> allowances necessary for completion of the deduction  
20 under clause (A). If the compliance account or overdraft account does not  
21 contain sufficient NO<sub>x</sub> allowances, the NO<sub>x</sub> Budget Administrator will  
22 deduct the required number of NO<sub>x</sub> allowances, regardless of the control  
23 period for which they were allocated, whenever NO<sub>x</sub> allowances are

1 recorded in either account.

2  
3 (iii) *Allocations.*

4  
5 (A) For every control period during which the NO<sub>x</sub> budget APPROVAL  
6 [permit] revised under subparagraph (i) is effective, the NO<sub>x</sub> budget unit  
7 under subparagraph (i) will be treated, solely for purposes of NO<sub>x</sub>  
8 allowance allocations under § 145.42 (relating to NO<sub>x</sub> allowance  
9 allocations), as a unit that commenced operation on the effective date of  
10 the NO<sub>x</sub> budget APPROVAL [permit] revision under subparagraph (i)  
11 and will be allocated NO<sub>x</sub> allowances under § 145.42. THE UNIT'S  
12 DEADLINE UNDER SECTION 145.84(b) FOR MEETING  
13 MONITORING REQUIREMENTS IN ACCORDANCE WITH  
14 SECTIONS 145.70 – 145.76 SHALL NOT BE CHANGED BY THE  
15 CHANGE IN THE UNIT'S REGULATORY STATUS OR BY THE  
16 REVISION OF THE NO<sub>x</sub> BUDGET APPROVAL UNDER  
17 SUBPARAGRAPH (i).

18  
19 (B) Notwithstanding clause (A), if the effective date of the NO<sub>x</sub> budget  
20 APPROVAL [permit] revision under subparagraph (i) is during a control  
21 period, the following number of NO<sub>x</sub> allowances will be allocated to the  
22 NO<sub>x</sub> budget unit under subparagraph (i) under § 145.42 for the control  
23 period: the number of NO<sub>x</sub> allowances otherwise allocated to the NO<sub>x</sub>

1 budget unit under § 145.42 for the control period multiplied by the ratio of  
2 the number of days, in the control period, starting with the effective date  
3 of the APPROVAL [permit] revision under subparagraph (i), divided by  
4 the total number of days in the control period, AND ROUNDED TO  
5 THE NEAREST WHOLE NUMBER OF NO<sub>x</sub> ALLOWANCES AS  
6 APPROPRIATE.

7  
8 (2) *Units with expired APPROVALS [permits].*

9  
10 (i) When the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget opt-in UNIT  
11 [source] does not renew its NO<sub>x</sub> budget opt-in APPROVAL [permit] under §  
12 145.83 (relating to applying for a NO<sub>x</sub> opt-in APPROVAL [permit]), the NO<sub>x</sub>  
13 Budget Administrator will deduct from the NO<sub>x</sub> budget opt-in unit's compliance  
14 account, or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget  
15 opt-in UNIT [source] is located, NO<sub>x</sub> allowances equal in number to and  
16 allocated for the same or a prior control period as any NO<sub>x</sub> allowances allocated  
17 to the NO<sub>x</sub> budget opt-in UNIT [source] under § 145.88 for any control period  
18 after the last control period for which the NO<sub>x</sub> budget opt-in APPROVAL  
19 [permit] is effective. The NO<sub>x</sub> authorized account representative shall ensure that  
20 the NO<sub>x</sub> budget opt-in UNIT'S [source's] compliance account or the overdraft  
21 account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in UNIT [source] is  
22 located includes the NO<sub>x</sub> allowances necessary for completion of the deduction. If  
23 the compliance account or overdraft account does not contain sufficient NO<sub>x</sub>

1 allowances, the NO<sub>x</sub> Budget Administrator will deduct the required number of  
2 NO<sub>x</sub> allowances, regardless of the control period for which they were allocated,  
3 whenever NO<sub>x</sub> allowances are recorded in either account.  
4

5 (ii) After the deduction under subparagraph (i) is completed, the NO<sub>x</sub> Budget  
6 Administrator will close the NO<sub>x</sub> budget opt-in UNIT'S [source's] compliance  
7 account. If any NO<sub>x</sub> allowances remain in the compliance account after  
8 completion of the deduction and any deduction under § 145.54 (relating to  
9 compliance), the NO<sub>x</sub> Budget Administrator will close the NO<sub>x</sub> budget opt-in  
10 source's compliance account and will establish, and transfer any remaining  
11 allowances to[, a new] general account SPECIFIED BY [for] the owners and  
12 operators of the NO<sub>x</sub> budget opt-in UNIT [source]. [The NO<sub>x</sub> authorized  
13 account representative for the NO<sub>x</sub> budget opt-in source shall become the  
14 NO<sub>x</sub> authorized account representative for the general account.]  
15

16 **§ 145.88. NO<sub>x</sub> allowance allocations to opt-in units.**  
17

18 (a) *NO<sub>x</sub> allowance allocation.*  
19

20 (1) By APRIL 1 [December 31] immediately before the first control period for which the  
21 NO<sub>x</sub> budget opt-in APPROVAL [permit] is effective, the Department will allocate NO<sub>x</sub>  
22 allowances to the NO<sub>x</sub> budget opt-in UNIT [source] and submit to the NO<sub>x</sub> Allowance  
23 Tracking System the allocation for the control period in accordance with subsection (b).

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(2) By no later than APRIL 1 [December 31], after the first control period for which the NO<sub>x</sub> budget opt-in APPROVAL [permit] is in effect, and APRIL 1 [December 31] of each year thereafter, the Department will allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in UNIT [source], and submit to the NO<sub>x</sub> Allowance Tracking System allocations for the next control period, in accordance with subsection (b).

**(3) THE DEPARTMENT WILL PUBLISH IN THE PENNSYLVANIA BULLETIN EACH DETERMINATION OF NO<sub>x</sub> ALLOWANCE ALLOCATIONS UNDER PARAGRAPHS (1) AND (2) AND WILL PROVIDE AN OPPORTUNITY FOR SUBMISSION OF OBJECTIONS TO THE DETERMINATION. OBJECTIONS SHALL BE LIMITED TO ADDRESSING WHETHER THE DETERMINATION IS IN ACCORDANCE WITH SUBSECTION (b). BASED ON ANY SUCH OBJECTIONS, THE DEPARTMENT WILL ADJUST EACH DETERMINATION TO THE EXTENT NECESSARY TO ENSURE THAT IT IS IN ACCORDANCE WITH SUBSECTION (b).**

(b) *Allocation procedures.* For each control period for which the NO<sub>x</sub> budget opt-in UNIT [source] has an approved NO<sub>x</sub> budget opt-in APPROVAL [permit], the NO<sub>x</sub> budget opt-in UNIT [source] will be allocated NO<sub>x</sub> allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations will be the lesser of one of the following:

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(i) The NO<sub>x</sub> budget opt-in UNIT'S [source's] baseline heat input determined under § 145.84(c) (relating to opt-in process).

(ii) The NO<sub>x</sub> budget opt-in UNIT'S [source's] heat input, as determined in accordance with §§ 145.70–145.76 (relating to recordkeeping and reporting requirements), for the control period in the year prior to the year of the control period for which the NO<sub>x</sub> allocations are being calculated.

(2) The Department will allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in UNIT [source] in an amount equaling the heat input (in mmBtu) determined under paragraph (1) multiplied by the lesser of one of the following:

(i) The NO<sub>x</sub> budget opt-in UNIT'S [source's] baseline NO<sub>x</sub> emissions rate (in lb/mmBtu) determined under § 145.84(c) **DIVIDED BY 2000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO<sub>x</sub> ALLOWANCES AS APPROPRIATE.**

(ii) The most stringent State or Federal NO<sub>x</sub> emissions limitation applicable to the NO<sub>x</sub> budget opt-in UNIT [source] during the control period **DIVIDED BY 2000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO<sub>x</sub> ALLOWANCES AS APPROPRIATE.**



1 (2) The NO<sub>x</sub> allowance tracking system account for NO<sub>x</sub> budget units which generated  
2 ERCs transferred to non-NO<sub>x</sub> budget units, including prior to the date of publication in  
3 the *Pennsylvania Bulletin*, shall have a corresponding number of NO<sub>x</sub> allowances retired  
4 that reflect the transfer of emissions regulated under this subchapter to the non-NO<sub>x</sub>  
5 budget units. The amount of annual NO<sub>x</sub> allowances deducted shall be equivalent to that  
6 portion of the non-NO<sub>x</sub> budget unit's NO<sub>x</sub> control period allowable emissions which were  
7 provided for by the NO<sub>x</sub> ERCs from the NO<sub>x</sub> budget unit.

8  
9 (3) Allocations for NO<sub>x</sub> allowance control periods following 2002 to the NO<sub>x</sub> ERC  
10 generating source may not include the allowances identified in paragraph (2).

11  
12 **INTERSTATE POLLUTION TRANSPORT REDUCTION REQUIREMENTS**

13  
14 **§ 145.100. APPLICABILITY TO UPWIND STATES.**

15  
16 **(a) THE PROVISIONS OF THIS SUBCHAPTER ARE APPLICABLE TO NO<sub>x</sub>**  
17 **BUDGET UNITS LOCATED IN THE STATES OF OHIO, WEST VIRGINIA,**  
18 **VIRGINIA, MARYLAND, DELAWARE, NEW JERSEY, NEW YORK OR NORTH**  
19 **CAROLINA OR LOCATED IN WASHINGTON, D.C.**

20  
21 **(b) THE NO<sub>x</sub> TRADING PROGRAM BUDGET FOR EACH STATE FOR A CONTROL**  
22 **PERIOD WILL EQUAL THE TOTAL NUMBER OF TONS OF NO<sub>x</sub> EMISSIONS**

1 **APPORTIONED TO THE NO. BUDGET UNITS IN EACH STATE AS FOLLOWS:**

2

<u>STATE</u>	<u>ELECTRIC GENERATING UNITS</u>	<u>NON-ELECTRIC GENERATING UNITS</u>
<u>OHIO</u>	<u>45,432</u>	<u>4,103</u>
<u>WEST VIRGINIA</u>	<u>26,859</u>	<u>2,184</u>
<u>VIRGINIA</u>	<u>17,091</u>	<u>4,104</u>
<u>MARYLAND</u>	<u>14,519</u>	<u>1,013</u>
<u>DELAWARE</u>	<u>4,306</u>	<u>232</u>
<u>WASHINGTON, D.C</u>	<u>207</u>	<u>26</u>
<u>NORTH CAROLINA</u>	<u>31,212</u>	<u>2,329</u>
<u>NEW JERSEY</u>	<u>9,716</u>	<u>4,838</u>
<u>NEW YORK</u>	<u>16,081</u>	<u>156</u>

3

4 **(c) THE COMPLIANCE SUPPLEMENT POOL FOR EACH STATE IS:**

5

<u>STATE</u>	<u>ALLOWANCE</u>
<u>OHIO</u>	<u>22,301</u>
<u>WEST VIRGINIA</u>	<u>16,709</u>
<u>VIRGINIA</u>	<u>5,504</u>
<u>MARYLAND</u>	<u>3,882</u>

<u>DELAWARE</u>	<u>168</u>
<u>NEW JERSEY</u>	<u>1,550</u>
<u>NEW YORK</u>	<u>1,379</u>
<u>NORTH CAROLINA</u>	<u>10,737</u>
<u>WASHINGTON, D.C.</u>	<u>0</u>

1  
2 **(d) ANY PROVISION TO THE CONTRARY NOTWITHSTANDING, THIS SECTION**  
3 **IS NOT APPLICABLE IF ONE OF THE FOLLOWING APPLIES:**

4  
5 **(1) NO, BUDGET UNITS IN THE STATE OR WASHINGTON, D.C. ARE**  
6 **REQUIRED TO COMPLY WITH AN EMISSION LIMITATION ESTABLISHED**  
7 **BY THE ENVIRONMENTAL PROTECTION AGENCY UNDER SECTION 126**  
8 **OF THE CLEAN AIR ACT.**

9  
10 **(2) THE STATE OR WASHINGTON, D.C. SUBMITS A STATE**  
11 **IMPLEMENTATION PLAN THAT THE ENVIRONMENTAL PROTECTION**  
12 **AGENCY EXPRESSLY DETERMINES MEETS THE REQUIREMENTS OF**  
13 **SECTION 110(a)(2)(D)(i)(I) OF THE CLEAN AIR ACT.**

14  
15 **(3) THE ENVIRONMENTAL PROTECTION AGENCY PROMULGATES A**  
16 **FEDERAL IMPLEMENTATION PLAN FOR THE STATE OR WASHINGTON,**  
17 **D.C. TO EXPRESSLY MEET THE REQUIREMENTS OF SECTION**  
18 **110(a)(2)(D)(i)(I) OF THE CLEAN AIR ACT.**



**Interstate Ozone Transport Reduction  
Comment and Response Document**

May 16, 2000

**Bureau of Air Quality  
Department of Environmental Protection**



**Interstate Ozone Transport Reduction  
Comment and Response Document**

The Environmental Quality Board published a notice of public hearing and comment period on March 6, 1999 in the *Pennsylvania Bulletin* (29 PaB 1319). The public comment period closed on May 10, 1999. Three public hearings were held to receive comments on the proposed rulemaking as follow:

April 6, 1999	April 7, 1999	April 8, 1999
DEP Southwest Regional Office 400 Waterfront Drive Pittsburgh, PA	DEP Southcentral Regional Office Susquehanna River Conference Room 909 Elmerton Ave Harrisburg, PA	DEP Southeast Regional Office Suite 6010 Lee Park 555 North Lane Conshohocken, PA

This document summarizes the comments received at the public hearings and the written comments received during the public comment period pertaining to Subchapter A. A response to each comment is provided. Please note, the number in parenthesis after each comment refers to the number of the commentator. Comments on Subchapters B and C were received. These comments will be summarized and responses prepared when the Department finalizes these rules.

Attachment A contains a copy of the one-page summaries submitted by the commentators during the public comment period.

**List of Commentators**

<b>Number</b>	<b>Commentator</b>
1	Daniel C. McIntire Panther Creek Partners 1001 Industrial Road Nesquehoning, PA 18240
2	J. Darrell Bowen CNG Transmission Corporation 625 Liberty Avenue Pittsburgh, PA 15222-3199
3	International Paper Co Mark Shaw MacDonald, Illig, Jones & Britton LLP 100 State Street Suite 700 Erie, PA 16507-1498

Number	Commentator
4	Jim Murphy Allegheny Power 800 Cabin Hill Drive Greensburg, PA 15601
5	Billie Ramsey Anthracite Region Independent Power Producers Association 1300 Market Street Suite 7 Camp Hill, PA 17043
6	Bruce Alexander PECO Energy 2301 Market Street Philadelphia, PA 19101
7	Tom Keller PP&L 2 North Ninth Street Allentown, PA 18101-1179
8	Herman Schopman Trigen Energy Corporation 2600 Christian Street Philadelphia, PA 19146
9	Tom Hess Cambria CoGen Company 7201 Hamilton Boulevard Allentown, PA 18195-1501
10	David A. Felcman Texas Eastern Transmission Corporation 5444 Westheimer 77056-5388 P.O. Box 1642 Houston, TX 77251-1642
11	Gary A. Young National Fuel Gas Supply Corp. PO Box 2081 Erie, PA 16512
12	Gary C. Furlong Sun Company, Inc. 3144 Passyunk Ave Philadelphia, PA 19145-5299

<b>Number</b>	<b>Commentator</b>
13	Fred A. Sembach Pennsylvania Chamber of Business and Industry 417 Walnut Street Harrisburg, PA 17101-1902
14	F. L. Streitman Essroc Cement Corp. 3251 Bath Pike Nazareth, PA 18064
15	ARIPPA c/o Bart E. Cassidy Manko Gold & Katcher LLP 500 N. Third Street Harrisburg, PA 17101
16	Douglas L. Biden Electric Power Generation Assn. 301 APC Building 800 North Third Street Harrisburg, PA 17102
17*	Zinc Corporation of America c/o Makram Jaber Akin, Gump, Strauss, Hauer & Feld, LLP 1333 New Hampshire Ave, NW Suite 400 Washington, DC 20036
18	Lynn I. Ratzel PP&L, Inc. Two North Ninth Street Allentown, PA 18101-1179
19	Mary Beth Whitfield Williams Gas Pipeline Corp-Transco 2800 Post Oak Boulevard (77056) PO Box 1396 Houston, TX 77251-1396
20	Robert W. Orchowski Duquesne Light Co. 411 Seventh Ave PO Box 1930 Pittsburgh, PA 15279

\* Requested a copy of the final rulemaking when it is submitted to the Standing Committees and IRRC.

Number	Commentator
21	James T. Murphy Allegheny Power 800 Cabin Hill Drive Greensburg, PA 15601-1689
22	J. Andrew Hadley, PE Procter & Gamble PO Box 32 Mehoopany, PA 18629
23	Vincent J. Ammirato, PE Columbia Gas Transmission 1700 MacCorkle Ave, SE Charleston, WV 25314
24	Tomas Powers Lehigh Portland Cement Company 200 Hokes Mill Road York, PA 17404
25	Robert E. Callahan P. H. Glatfelter Company Corporate Headquarters Spring Grove, PA 17362
26	International Paper Company c/o Mark Shaw MacDonald Illig Jones & Britton LLP 100 State Street Suite 700 Erie, PA 16507-1498
27	Tom Powers American Portland Cement Alliance Pa. Cement Industry NO <sub>x</sub> Workgroup c/o Lehigh Portland Cement Co. 200 Hokes Mill Road York, PA 17404
28	David J. Cesareo PECO Energy Company 2301 Market Street, S21-2 PO Box 8699 Philadelphia, PA 19101-8699
29	Vincent J. Brisini GPU, Inc. 1001 Broad Street Johnstown, PA 15907

<b>Number</b>	<b>Commentator</b>
30	Michael Fiorentino Clean Air Council 135 South 19 <sup>th</sup> Street Suite 300 Philadelphia, PA 19103
31	Marcia L. Spink Office of Air Programs US EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029
32	Jim Qin, Ph.D., PE Trigen Energy Corporation One Water Street White Plains, NY 10601-1009
33	Pennsylvania Power Company C/o Douglas J. Weber FirstEnergy 76 S. Main St Akron, OH 44308
34*	Kathleen Frackler American Lung Association of Pennsylvania 6041 Linglestown Road Harrisburg, PA 17112-1208
35	William S. Kubiak US Steel 600 Grant Street Pittsburgh, PA 15219-2749
36	Eugene M. Trisko Eastern Energy Alliance PO Box 708 Middletown, MD 21769
37	George Ellis Pennsylvania Coal Association 212 North Third Street Suite 102 Harrisburg, PA 17101

\* Requested a copy of the final rulemaking when it is submitted to the Standing Committees and IRRC.

<b>Number</b>	<b>Commentator</b>
38	Joel Bluestein Coalition for Gas-Based Environmental Solutions, Inc. 1655 North Fort Myer Drive Suite 600 Arlington, VA 22209
39	Sonya Wiggins Stovall Merck & Co., Inc. Sunneytown Pike PO Box 4 WP20-208 West Point, PA
40	Nancy F. Parks Sierra Club, Pennsylvania Chapter 201 West Aaron Square PO Box 120 Aaronsburg, PA 16820-0120
41	John J. Deemer Tosco Refining Company 4101 Post Road Trainer, PA 19061
42	John Rohrbach PennFuture 212 Locust Street, Suite 410 Harrisburg, PA 17101
43	General Electric Company C/o Mark J. Shaw MacDonald Illig Jones & Britton LLP 100 State Street Suite 700 Erie, PA 16507-1498
44	Daniel B. Nugent RC Cement Co., Inc. 100 Brodhead Road Suite 230 Bethlehem, PA 18017-8989
45	Robert E. Nyce Independent Regulatory Review Commission 333 Market Street 14 <sup>th</sup> Floor Harrisburg, PA 17101

## **Comments and Responses**

### **Comments on Subchapter A. NO<sub>x</sub> Budget Trading Program**

#### **General Comments**

1. The adoption of Chapter 145 does not result in a seamless transition from the Chapter 123 regulations. The Department should modify Chapter 123 as needed while keeping most of the Chapter 123 requirements. (29)

Department response: The proposed Chapter 145 was based on the Environmental Protection Agency (EPA) NO<sub>x</sub> model trading rule found at 40 CFR Part 96. The final rule is based on the EPA Section 126 trading program found at 40 CFR Part 97. The Department determined that replacing the Chapter 123 NO<sub>x</sub> trading rule with the EPA model rule would allow a broader trading area resulting in lower control costs by ensuring that the trading rule is consistent with rules in other states. A revision of Chapter 123 may have resulted in misunderstandings or omissions when compared to the detail in the proposed Chapter 145. While the Department has tried to make the transition as seamless as possible, not every transition issue could be resolved. The areas of monitoring and use of the compliance supplement pool are still areas of concern to some commentators. These issues and others are discussed in this document.

2. The commentator supports regulatory strategies that provide flexibility in choosing among options for complying with pollution control requirements. (13, 22)

Department response: The Department thanks the commentator for its support.

3. The policy issues, economic impacts or national regulatory considerations behind the NO<sub>x</sub> SIP call have not been discussed at the Air Quality Technical Advisory Committee (AQTAC). The Environmental Quality Board should note that the AQTAC's review has been limited to the consideration of implementation issues. (16, 20)

Department response: The Department did ask the AQTAC to focus on implementation of the SIP Call. The EQB was advised of this during the proposed regulation discussion. Since the initial proposal of Chapter 145, the AQTAC has had several meetings and has discussed the SIP Call and the Section 126 finding.

4. The commentator supports the broad regional approach taken by EPA in the SIP Call. The NO<sub>x</sub> reductions can help Pennsylvania achieve the ozone standard. Other states are encouraged to do their fare share. (18, 28, 40)

Department response: The Department agrees with the comment.

5. The rule should be revised to explicitly authorize the EPA to assist the state in implementing the rule. In general, EPA would operate the emissions and trading tracking systems. (31)

Department response: The rule has been revised to add a definition for NO<sub>x</sub> Budget Administrator. It is the Department's intention to designate the Environmental Protection Agency as the NO<sub>x</sub> Budget Administrator.

6. The NO<sub>x</sub> trading rule is based on the SO<sub>2</sub> trading program which controls utility sources. The rule has been developed with utilities in mind and should not include industrial units. (35)

Department response: The Department disagrees with the comment. The EPA has determined controls on large industrial sources are highly cost effective. In addition, EPA determined that these same sources contribute to ozone transport and nonattainment issues. Therefore, these sources are included in the program.

7. There should not be any inter-pollutant trading under this program. (40)

Department response: The Department agrees. Inter-pollutant trading is not permitted under this program.

### Definitions

8. The definition of "emissions" should be revised with the phrase "as determined". This limits the emissions covered by the Chapter 145 rules to those measured and reported as required by Chapter 145. (31)

Department response: The suggested change has been made to the definition.

9. The definition of "maximum potential NO<sub>x</sub> emission rate" should include the phrase "under all operating conditions of the unit except for unit start up, shutdown, and upsets." This phrase is needed so that acid rain sources use the same definition and to clarify what is reported in the electronic quarterly report. (31)

Department response: The suggested change has not been made to the definition. The Department believes that all NO<sub>x</sub> emissions should be reported under this program.

10. The definition of NO<sub>x</sub> Budget Administrator in Section 121.1 should be revised to clearly state that EPA is the administrator. (31)

Department response: A definition of NO<sub>x</sub> Budget Administrator has been added to Chapter 145. The Department cannot mandate that EPA be the NO<sub>x</sub> Budget Administrator. The Department does intend to designate EPA as the NO<sub>x</sub> Budget

Administrator. This designation will occur after the rule has been adopted and the EPA and Department have had an opportunity to discuss this issue.

11. The definition of "NO<sub>x</sub> allowances held" has a typographical error and should be revised to read "the NO<sub>x</sub> allowances recorded or submitted for recordation, in accordance with this subchapter, in a NO<sub>x</sub> allowance tracking system account." (31, 45)

Department response: The regulation has been revised as suggested.

12. The definition of NO<sub>x</sub> authorized account representative should be revised to add the phrase "this subchapter" after "in accordance with". (31)

Department response: The regulation has been revised as suggested.

13. The definition of "NO<sub>x</sub> budget trading program" may limit other states from trading with Pennsylvania. Other states' trading programs can be established in accordance with the subchapter or 40 CFR 51.121. The definition of "state" has a similar problem. (31, 45)

Department response: The definition of state does not need revision. The definition of "NO<sub>x</sub> budget trading program" and "state" have not been revised. This definition states that the trading program is multi-state. The phrase of concern is "established in accordance with this subchapter." This phrase does not require other states to receive approval from the Department for their program or specify how other states create their programs.

14. Definitions for "electric generating unit" and "non-electric generating unit" are proposed. One commentator stated that these terms were not defined and should be included for clarity. (39, 45)

Department response: The Department has not included definitions of electric generating unit and non-electric generating unit. Section 145.4 was revised to clarify the two classifications as described in the Section 126 trading rule.

15. The term "natural person" is used in the NO<sub>x</sub> authorized account representative. The term is unclear and should be deleted. (39)

Department response: The term natural person has been retained. This is the wording used by EPA to clarify that a corporation cannot be a person under this definition. Keeping this wording assures consistency among the states.

16. The definition of continuous emission monitor implies that a flow monitor is a component of any CEM. There are provisions for CEMs that do not require flow monitors. The definition should be revised. (39)

Department response: The definition has not been revised. The definition states that the list of components are required consistent with 40 CFR Part 75. If Part 75 does not require flow monitors, then they are not required under this definition.

17. The definition of “maximum design heat input” should have a reference condition specified. Standard conditions of 68° F and 14.696 psia at full load are suggested. The applicable test method for NO<sub>x</sub> (40 CFR 70, Appendix E, 2.1.3.1) specifies that gaseous fuel flow should be converted to standard conditions for the calculation of heat input. (10)

Department response: The Department has not made the suggested change. The control program was based on those controls found to be cost effective by EPA. The EPA used this information to help determine what sources contribute to ozone pollution transport. The commentator references an Appendix that does not exist in the Code of Federal Regulations. The Department is not adopting standards for internal combustion engines at this time. The Department will review this issue when final standards are proposed for this category.

18. The Board did not include a definition for “nameplate capacity”. The Board should add the federal model definition. (45)

Department response: The Department did include a definition for “nameplate capacity.” This definition was and is the same as the federal definition. No additional change is necessary.

#### SIP Call Implementation

19. There have been several legal challenges to the EPA SIP Call. Pennsylvania should include language in the final rulemaking that would revoke implementation of the rule subject to the outcome of the litigation. One commentator suggested that language be added to protect Pennsylvania’s competitive interests. (4, 21, 45)

Department response: The Department has not included the requested language in the final rule. The control requirements are necessary in order to attain the ozone standard in Philadelphia and to maintain the standard in the remainder of the state. In addition, reduction of emissions will help Pennsylvania reduce the amount of pollutants transported to downwind states. These reductions will lead to healthier air for all citizens of Pennsylvania and the downwind states.

20. The state rules should be consistent with the other 22 states so that Pennsylvania is not economically disadvantaged. (3, 13, 20, 36, 37)

Department response: In general, the Department agrees with the commentator. The regulations have been developed to be as consistent as possible among the states while

still meeting the goals of the SIP Call and the Section 126 ruling. However, it is not possible to guarantee that every aspect of the rule is identical to every aspect of all the other states' rules. The SIP Call allows each state to design a rule that best meets the needs of the state. Thus, states will vary slightly in their rules. It will be EPA's responsibility to review each state's SIP revision to determine if the control programs are similar.

21. The regulations should be structured to take into account any future changes to the SIP Call. The regulations should not place the state at a competitive disadvantage compared to other states. The emission reduction requirements should be consistent with other states. (7, 18, 33, 36, 37, 45)

Department response: The Department has adopted an allocation method that is consistent with the EPA Section 126 rule. Therefore, the control requirement will be consistent with other states that adopt that rule. However, the SIP call does not mandate that states adopt the same rule. Each state may adopt rules to meet local needs so long as the total state budget is met. If a state chooses to control other sources and reduce control requirements on budget sources and still meet the budget, then that state has complied with the SIP call.

22. A contingency provision should be included in Chapter 145 that requires broad participation by a majority of the states before the regulation is implemented. (29)

Department response: The Department has included a Section 145.100 that would require controls in those states that EPA found contribute to the ozone nonattainment problem in Pennsylvania. This section would be implemented if those states fail to comply with the Section 110 rule or the Section 126 finding. These reductions are needed to protect the health of Pennsylvania citizens. The SIP attainment plans for both Philadelphia and Pittsburgh envision reductions from major NO<sub>x</sub> sources. The controls have been determined to be highly cost effective by EPA.

23. Suggested wording is provided which require the regulation to be modified or invalidated depending on litigation or enforcement of the SIP Call in other states. (18)

Department response: The Department has not made the suggested modification. The Department will review any litigation. The Department will discuss any need for changes resulting from litigation with the Air Quality Technical Advisory Committee.

24. There should not be a trigger provision in the final regulation. It would be inappropriate for Pennsylvania to limit implementation of the rule until such time as any or all other states implement the rule. Pennsylvania should state in its final preamble that it will not impose Phase III of the OTC NO<sub>x</sub> MOU in place of the SIP call if litigation delays implementation. (28)

Department response: The Department has not included a trigger provision. The controls are needed for Philadelphia to attain the ozone standard.

25. The Department should state that Phase III of the NO<sub>x</sub> MOU will not be implemented and that the SIP Call regulation is comparable. (33, 37)

Department response: The Ozone Transport Commission has determined that Phase III of the NO<sub>x</sub> MOU is equivalent to the SIP Call on a regional basis. Pennsylvania is adopting a regulation consistent with the SIP Call and Section 126 finding. Consistent with the OTC findings, adoption and implementation of the SIP Call requirements is equivalent to adopting Phase III of the NO<sub>x</sub> MOU.

26. The effective date of the regulation should be the same as required by EPA for other states. Suggested wording is provided. (36, 37)

Department response: The comment is intended to ensure that all sources in the affected states implement control programs at the same time. This would ensure that the electric generation industry will not be disadvantaged because similar sources in other states do not control. However, these sources are covered by the Section 126 finding that requires compliance by May 1, 2003. The Department will implement the regulation by 2003 in order to achieve the necessary health benefits for all Pennsylvanians. The Department supports the EPA Section 126 finding and will work to ensure implementation of the program.

27. The provisions of Chapter 123 that are overlap with the proposed Chapter 145 should be moved to Chapter 145. This would reduce the paperwork and administrative requirements related to the transition to Chapter 145. (39)

Department response: The Department proposed a new Chapter 145 in order to assure consistency with other states based on the EPA model rule. The Chapter 123 provisions will be deleted when appropriate. This will eliminate the potential for confusion.

28. The Pennsylvania Legislature approved a resolution that called on the Department to revise its proposed regulation to make sure that Pennsylvania sources were not subject to a more stringent standard than similar sources in other states. In addition, the resolution was concerned about the implementation schedule for Pennsylvania sources. The commentator believes that language should be added to protect Pennsylvania's competitive interests. (45)

Department response: The Department has not included additional language as requested. The emission reductions are needed to protect the health of Pennsylvania citizens and to demonstrate compliance with the Clean Air Act requirements of achieving the health based standard. The commentator raised the concern that sources in other states will not implement similar controls on a timely basis. However, these same sources are subject to the Section 126 remedy requiring compliance by 2003 using an

allocation the same as in Sections 145.40-43. As a back-up to the Section 126 remedy, the Department has added a Section 145.100 that requires sources in several states that significantly contribute to Pennsylvania's air quality to meet the same emission limitations as sources located in Pennsylvania.

#### Emission Budget Comments

29. The regulations should be repropose when EPA revises the emission inventory and budgets for each sector. The Department should include the same source sectors as included in the EPA SIP Call. If the Department decides to change the budgets or emission reduction obligations, then the rulemaking should be repropose to allow additional comment. (4, 21)

Department response: The Department revised the final rule to incorporate the final EPA budgets. These budgets were the subject of several public comment periods. Sources have had several opportunities to review and comment on the data. The Department will use the base inventories developed by EPA to determine the appropriate allocations. The Department does not believe that additional comment is necessary since the EPA budgets are being used.

30. The electric generating unit budget should be revised to include the units rated in the 15 to 25 megawatt range. (4, 7, 21)

Department response: The regulation has been revised to cover units greater than 25 megawatts. These sources are included in the emission inventory developed by EPA. No additional revision is necessary.

31. Source specific inventory data is submitted to clarify what units are affected and the baseline firing rates. This data was not submitted to EPA during the agency's public comment periods. The company should not be penalized for failing to respond to EPA. The Department should provide a proper notice for identification of all affected sources. (12, 13)

Department response: The EPA reopened the public comment period and accepted comments. A final inventory was issued with the Section 126 trading rule in January 2000.

32. Pennsylvania should follow EPA's model NO<sub>x</sub> budget rule in regulating electric generating units with a nameplate capacity greater than 25 megawatts. (13, 15)

Department response: The Department has revised the regulation as suggested.

33. The EPA inventory contains inaccuracies. The regulation should be based on source specific data maintained by the Department. (15)

Department response: The Department will use the data collected by EPA. This data has been subject to several public comment periods. The budgets and control findings that are based on this inventory have been reviewed by the District Court. The Department believes that this data is the best available for the program.

34. The program should not be based on EPA's flawed inventory. Sources should receive notice of the inventory and an opportunity to comment on the inventory in the permit issuance process. (25)

Department response: Sources will have an opportunity to comment on their permits. However, the data has been subject to several public comment periods and has been litigated at the federal level.

35. Section 145.40 should be revised to reflect updated information submitted to EPA under the request for modification of data period provided in the final rulemaking. (39)

Department response: The regulation has been revised. The EPA published final budget values in the January 18, 2000 Federal Register and the March 2, 2000 Federal Register.

#### Compliance Supplement Pool and Banking

36. The distribution of the compliance supplement pool should be based on banked allowances generated under Chapter 123. The regulations should be revised to include reductions from 1999. (4, 13, 21)

Department response: The Department agrees that certain Chapter 123 banked allowances should be allowed to transfer to Chapter 145 allowances using the compliance supplement pool. This rule restricts the early reductions to those reductions that occurred in 2001 and 2002 except for reductions that result from the installation and operation of control technology. For these early reductions, the final rule, in Section 145.43, allows reductions that occur in 1999 to be included.

37. Certain Chapter 123 allowances should not be allowed to be considered for the compliance supplement pool. These allowances are bonus allowances issued under Section 123.119 and allowances purchased from out of state sources. (4)

Department response: The Department agrees that bonus allowances do not meet the requirements for early reduction allowances. Bonus allowances were generated during 1997 and 1998 and do not meet the generation requirements of Section 145.43. The Department believes that allowances banked during the appropriate years (as identified by the allowance serial number) should qualify as early reductions. These allowances represent a reduction at a source and are a compliance investment by a Pennsylvania unit. This investment in over control at another facility is the result of the market forces in the trading program and should be supported.

38. The Chapter 123 bank that is carried forward to Chapter 145 should be based on the number of allowances at the end of 2002. This shows the cumulative effect of control efforts at each source. As a result, Section 145.5(c)(9) should be revised. (4)

Department response: The Department disagrees with the proposed change. This recommendation would discourage installation of control equipment to reduce emissions during the 2001 and 2002 control periods. For example, a source may emit in 2000 and 2001 more allowances than provided in Chapter 123, Appendix E because of acquisition of allowances from other sources. It then installs control equipment and is able to bank emissions in 2002. The early reduction allowances were designed, by EPA, for this purpose.

39. The compliance supplement pool should be distributed to existing facilities based on the output of the units for the years 1995 through 1997. This addresses the problem that some sources did not have to make as much emission reductions as others have. It also reflects more current operating conditions. If the Department does not agree with these suggestions and the proposed distribution method is adopted, then there should be no prejudice regarding allowances banked by Pennsylvania sources that were acquired from other states. (6, 28)

Department response: The Department disagrees with the proposal to distribute the compliance supplement pool based on 1995 through 1997 activity. The Department agrees that allowances allocated in 2001 and 2002, not used, and then banked should be considered for the compliance supplement pool regardless of the state in which they were created.

40. The proposed regulation should allow all banks created under the Chapter 123 allowance program to be carried forward to the Chapter 145 program and not be restrained by the compliance supplement pool. (7, 16, 18, 20, 22, 29)

Department response: The Department disagrees with the comment. The EPA rules at 40 CFR Section 51.121 establishes the limitation on the use of the compliance supplement pool. Most of the banked allowances under Chapter 123 would not normally meet the early reduction requirements of Chapter 145 such as emissions less than 0.25 lb/mmBtu and 80% less than the emission rate occurring in 2000. Because of the provision to allow Chapter 123 banked allowances to roll forward to the Chapter 145 program, the Department has maximized the number of credits available.

41. There should be no restrictions on banked allowances under Chapter 123 being transferred to Chapter 145. Allowances created in other states but purchased by Pennsylvania sources should be available for transfer to the Chapter 145 banks. (12, 18)

Department response: The Department disagrees that all Chapter 123 banked allowances should be transferable to Chapter 145. Section 51.121 specifically establishes limitations on the number and type of allowances that can be moved forward to the new program.

The Department does agree that all allowances owned by Pennsylvania sources that were created in 2001 and beyond are eligible for transfer, regardless of the state of origin.

42. The use of NO<sub>x</sub> credits generated in other affected states should be allowed to be banked in the Commonwealth's supplemental compliance pool. (14, 18, 24, 27, 28, 44)

Department response: The Department agrees that allowances created in other states may be purchased and banked by Pennsylvania sources. These banked allowances are then eligible to be considered for the compliance supplement pool. However, sources in other states may not apply to bank credits or use Pennsylvania's compliance supplement pool.

43. The proposed use of the compliance supplement pool is supported. Allowances purchased from sources in other states should be allowed to be considered for the compliance supplement pool. (17, 39)

Department response: The Department agrees with the comment. No change is necessary in the regulation.

44. The Section 145.55(c) should be deleted. It may conflict with the provisions of paragraph 9 which allows the Chapter 123 banked credits to be early reductions. One commentator stated that it was unclear if a source could receive credit for both early reductions or banked allowances. (18, 45)

Department response: The Department revised the compliance supplement pool provisions and placed them in Section 145.43. The regulation specifies how sources may apply for early reductions or apply to carry over banked allowances. The section now states that a source may not apply for both early reductions and banked credits for the same emission reduction. The regulation allows the source to apply for the credit it believes it has earned.

45. All banked credits created in Chapter 123 should expire at the end of 2002. These credits are not the same as those under Chapter 145. (30, 40)

Department response: The Department has retained the proposed conversion of banked Chapter 123 allowances to Chapter 145 allowances using the compliance supplement pool. This flexibility was provided by EPA in recognition of the program currently being implemented in Pennsylvania. The compliance supplement pool does expire at the end of 2004.

46. The regulation should be revised to place daily and seasonal caps on individual sources. The banking flow control mechanism in the proposed rule will not limit a source's actual emissions. A daily cap will help prevent exacerbations of ozone episodes. Seasonal caps would thwart reliance on banked allowances at such levels that harm attainment efforts. If this proposal is not accepted, then the withdrawal rates should be revised. (30)

Department response: The regulation has not been revised as suggested. The proposed rule places a seasonal cap on emissions. Daily caps are not proposed. However, sources are not free to emit at an unlimited rate. RACT places a limit on the peak emission rate for a source.

47. The compliance supplement pool should be revised to restrict its usage to voluntary early reductions and renewable energy and efficiency projects. (30)

Department response: Early reductions are allowed to apply for credit under the compliance supplement pool. The Department believes that banked allowances under Chapter 123 should be considered a reduction below applicable levels and qualify for the compliance supplement pool. The final rule does, however, provide an incentive for voluntary early reductions. Section 145.43 has been revised to provide that 10% of the compliance supplement pool is set aside for voluntary early reductions resulting from the installation and operation of NO<sub>x</sub> control equipment.

48. It is unclear how the state will attain the budget if all of the banked allowances are carried forward and used in 2003. The Board should explain how the Department can allow the use of old banked allowances and not exceed the NO<sub>x</sub> allocation. (45)

Department response: The budget is set for each year in Section 145.40. The compliance supplement pool of Section 145.43 is an extra amount of allowances for use by sources. These allowances can be earned by reducing emissions before 2003 either through the installation of control equipment, process changes, or lower utilization of units. The use of these early reduction allowances from the compliance supplement pool will provide a smooth transition to the new budget level. Each year, the Department will allocate the number of allowances as provided in Section 145.40. However, sources may use banked, compliance supplement pool allowances, or purchase current year allowances. These activities may result in the total emissions from the Pennsylvania sources exceeding the budget provided in Section 145.40. However, in another year, the emissions will be lower. Each source must be able to demonstrate that its emissions are less than or equal to the number of allowances in its compliance account.

49. The control periods for early reductions should be expanded to include the years 1999 through 2001. (39, 45)

Department response: The Department has not made the suggested change. The EPA model rule specifies the years 2001 and 2002 as the base year for early reductions. The Department has retained this provision in order to be consistent with other states. In addition, by specifying the year 2001 as the first early reduction year, sources have notice and an opportunity to take action including upgrading monitoring to meet the new requirements (if necessary).

50. Only emission reductions created in Pennsylvania should be allowed to be banked by Pennsylvania sources. Allowing out of state reductions increases the opportunity for double counting. (40)

Department response: Each allowance under the NO<sub>x</sub> MOU has a unique identifier. This will prevent double counting. Allowing out of state allowances to be banked by Pennsylvania sources is a basic tenet of the trading program and should be supported.

51. The progressive flow control provisions of Section 145.55 are supported. (40)

Department response: The Department thanks the commentator for their support and points out that the compliance supplement pool provisions have been moved to Section 145.43.

52. The use of the compliance supplement pool is opposed. These credits should be retired. Their use would “bust” the cap of emissions. (40)

Department response: The use of the compliance supplement pool provides some assurance that there will be no generation capacity shortage due to delays in control installation. In addition, the pool rewards sources for reducing emissions prior to the control requirement. This benefits the environment and reduces the possibility that sources will increase emissions just to use up their allowances. No change has been made to the proposed rule.

53. The compliance supplement pool should be used for energy efficiency and renewable energy projects. (42)

Department response: The Department has not made this suggested revision. EPA is developing guidance on how energy efficiency and renewable energy projects may earn allowances. This guidance has not been completed. Therefore, the Department is not including this provision at this time. The guidance will be discussed with the Air Quality Technical Advisory Committee.

54. Section 145.54(c)(10) specifies the compliance supplement pool for Pennsylvania is 13,716. The commentator questions why the need to specify the number and what happens if EPA revises the pool. (45)

Department response: The Department has moved the compliance supplement pool to Section 145.43. This section now lists the pool as 15,763. This is the value specified by EPA in the Section 126 remedy. A specific number of allowances should be specified so that sources may know the size of the pool available. The Department will consider revising this section if EPA adjusts the pool size in the future.

#### Allocation Methodology

55. The proposed allocation methodology which allocates to electric generating units at 0.15 lb/mmBtu or allowable emission rate, whichever is lower, is supported. This methodology provides enough allowances to clean sources to operate. (4, 7, 42)

Department response: The Department has revised Section 145.42 to eliminate the consideration of the allowable emission rate for existing sources. This change was recommended at the Air Quality Technical Advisory Committee (AQTAC) meeting of April 21, 1999.

56. The proposal to allocate for a three year period, 2003 to 2005, and then annually thereafter is supported. (4, 21)

Department response: The Department has revised the allocation methodology found in Section 145.42. The allocations are based on average heat input for certain years as specified in the section. The allocations will be for 5 year periods in order to provide sources with sufficient certainty to allow planning and control installation. The annual allocation provision has been deleted.

57. The current proposal uses a 1 year heat input to determine the allocation for the years after 2005. The commentator proposes that Section 145.42(a) be revised to use the average of the two highest amounts of the unit's heat input for the three control periods that begin six years before the year of the allocation. This is suggested to more accurately reflect the normalization of the plant. (4, 6, 20, 21, 28)

Department response: The Department has revised Section 145.42 to use an average heat input. The initial heat input time frame is 1995 through 1998 for electric generating units and 1995 (with some approved modifications) for non-electric generating units. The program transitions to the use of a 5-year average baseline for both categories of sources. This will reflect the normal use of each unit.

58. The Department should revise the allocation scheme to remove the consideration of the allowable emission rate. This is not contained in the federal rule. (1, 5, 13, 15, 16, 18, 20, 21, 28, 30, 32, 38, 39, 40, 41, 45)

Department response: The Department has revised the section as suggested for existing units. The use of allowable has been retained for the new source set-aside. The allocation method is consistent with the method found in Part 97.

59. The proposed allocation scheme is supported for the years 2003 through 2005. Beginning in the year 2006, the Department should use an allocation method that is based on the output of the source. EPA guidance on this method is being developed. Use of output based allocations provides an incentive to use the lowest emission generation possible. (6, 8, 32)

Department response: The suggestion to make output based allocations has not been made. The Department is concerned that adopting the proposal prior to reviewing the EPA allocation guidance is premature. Upon issuance of the EPA guidance, the Department will discuss the use of output based allocations with the AQTAC.

60. Allocations for the years 2006 and beyond should be made in 3 year increments to support long-term planning. (6, 28)

Department response: The regulation has been revised to provide allocations in 5 year increments. This should provide sufficient lead time for planning.

61. The proposed allocation scheme should be revised to allocate to repowered sources in the same manner as new sources. This provides an incentive to repower older units. (7)

Department response: The Department has revised the allocation method to resemble that proposed by EPA in Part 97. This allows repowered sources to be treated as existing sources and receive allowances based on the old units' heat input. Since a repowered source will emit at a much lower rate than an old source, there should be sufficient allowances for operation.

62. Allocations should be made using an output based scheme. EPA is moving in this direction. EPA has issued New Source Performance Standards for utility boilers which are output based standards. EPA is working to develop guidance on how output based allocations can be incorporated into the trading program. (8, 28, 30, 32, 33)

Department response: The suggested revision has not been made. The Department is concerned that adopting the proposal prior to reviewing the EPA allocation guidance is premature. Upon issuance of the EPA guidance, the Department will discuss the use of output based allocations with the AQTAC.

63. Section 142(a)(i) should be revised to allow the use of 1995 through 1998 data. Many sources installed RACT by May 31, 1995 and had low heat rates or capacity factors. (29)

Department response: The Department has revised the section to use the average heat input for 1995 through 1998 for electric generating units. Non-electric generating units will use the 1995 data unless the source provided data to the EPA Administrator for one or more years of 1996 through 1998.

64. Use of a single season's heat input in determining a unit's heat input could result in a unit receiving a low allocation. The average of the two highest seasons over three years should be used for all sources for the initial and future years allocation. (13, 16, 25, 28)

Department response: The Department has revised the section to be consistent with the provisions of Part 97. The section now allows the use of multiple control periods to determine the heat input.

65. The use of a single year, 1995, for the non-EGU unit first allocation does not address possible operational problems. In addition, the use of a single year for future allocations does not address possible fluctuations in operations. The initial non-EGU allocation should use the same two year average as the EGU. Future allocations should be calculated using a two year average of the heat input. (17, 22, 25, 39)

Department response: The Department has revised the section to allow for the initial allocation a multiple year average provided that the data has been reviewed and approved by the EPA Administrator. After the initial allocation, the non-electric generating units use a multiple year average consistent with the provisions for electric generating units.

66. Electric generating sources should not be given special consideration by allowing them to use maximum allowable heat input rather than actual heat input. (21)

Department response: The Department agrees. No change in the regulation is necessary.

67. A portion of the difference in allocation to a unit in its pre- and post repowering stage should be either retired or transferred to the new source set aside rather than be returned to the main budget on a pro-rata basis. (30)

Department response: The Department has not made this suggested revision. The final regulation allocates to repowered sources at the same rate as existing sources. This procedure was discussed with the Air Quality Technical Advisory Committee on April 23, 1999. The definition of "commence commercial operation" contains the provision that a repowered source is an existing source.

68. Section 145.40 should use the term "control period" rather than "season". (31, 45)

Department response: The existing language clearly establishes the Pennsylvania NO<sub>x</sub> trading program budget that is used to calculate NO<sub>x</sub> budget unit allocations.

69. The term "allowable emission rate" is not defined. (31)

Department response: This term has been deleted from the program.

70. There should be a one-time allocation for all sources. This provides certainty to sources and is similar to the allocation method used in the acid rain program. A periodic review should be established to determine if the program is functioning properly. (33)

Department response: The Department disagrees with a one-time allocation. The final regulation provides allowances in 5-year blocks. This will provide certainty to sources while still allowing periodic revisions to the allocations to accommodate changes occurring in the industrial and power generating sectors.

71. New units are not clearly defined under Section 145.42. Units installed after May 1, 1995 would not have representative data on which to base their allocations for the 2003-2005 control period. "New" units should be explicitly defined. (39)

Department response: A "new" unit is one that commenced operation or are projected to commence operation on or after May 1 of the period used to calculate allocations. Thus, for example, a non-EGU unit that commenced operation after May 1, 1997 would be considered "new" and would receive allocations under Section 145.42(d) in the initial allocation period. New units are allocated based on their maximum design heat input. No change is necessary.

72. The units at a facility were shutdown during a portion of 1995. The allocations for non-EGUs should be based on the two highest heat input rates for the control periods of 1997, 1998 and 1999. (41)

Department response: The regulation allows non-EGUs to use an average heat input for 1995 through 1998 if the data was reviewed and approved by the EPA Administrator.

73. Allocations to non-EGU sources should be at the 0.15 lb/mmBtu rate. (1)

Department response: The Department disagrees with the comment. The EPA developed the state NO<sub>x</sub> budget based on a 60% reduction from non-EGUs. This reduction was found to be cost-effective. Therefore, the final regulation allocates to non-EGU sources at 0.17 lb/mmBtu rate.

74. Allocations for 2006 and beyond should be based on 0.15 lb/mmBtu. The heat input should be determined on a 5 year rolling average. (1)

Department response: The final regulation allocates to EGU units at the 0.15 lb/mmBtu rate and to non-EGU units at the 0.17 lb/mmBtu rate. This allocation scheme follows the EPA model rule and assures consistency with other states. The heat input is determined as an average of the specified baseline. The initial EGU heat input uses the highest two year average heat input for 1995 through 1998. After that, the heat input is the average of the baseline years.

75. The commentator notes that a number of commentators have made conflicting suggestions on the allocation method. The commentator requests that the Board explain why the method chosen is the best alternative. (45)

Department response: As discussed earlier, the Department revised the final regulation to change the allocation methodology. The allocation method now reflects the allocation method used in the Section 126 remedy. The allocation method now provides a longer time period (5 years) to provide facilities with additional planning time. The method allocates to sources in a clear and consistent manner.

## New Source Set Aside

76. The set aside for new sources should be reduced to 3 % for the first three years and then 1 % every year after. (4, 21)

Department response: The proposed set aside for new sources was 5 percent of the budget. EPA recommended this value as the average for all the 22 state SIP Call area. For Pennsylvania, 5% for three years equals 15% of the budget which is the same as the growth rate used by EPA for Pennsylvania electric generation units. If growth is less rapid than this rate, then the 5% set aside will not be used and will be returned to the existing sources.

77. There should be a timing requirement for distributing allowances under Section 145.42(d). (31)

Department response: Section 145.41(d) was added to require the Department to publish the allocation of the new-source set aside by April 1 of each year.

78. The Department should revise the new source set aside provisions to allow repowered sources to receive allowances. (7)

Department response: The definition of an affected unit is based, in part, on the date that the unit commenced operation. The definition of "commence commercial operation" states that the date it started commercial operation shall remain the date even if the unit is subsequently modified, reconstructed or repowered. Because of this definition, a repowered source is an existing source and will receive allowances as described in Section 145.42.

79. Section 145.42(b) should be revised to allocate to new or repowered sources as proposed by EPA in Section 96.42(b). (29)

Department response: The Department has made the recommended change.

80. New sources should only receive allowances equal to their need. Granting additional allowances to these sources will be economically unfair to existing sources. (12)

Department response: The Department has retained the provision of the lower of allowable of 0.15/0.17. This is consistent with the EPA allocation method found in Part 97.

81. The provisions that return unused new source allowances to existing sources is supported. (28)

Department response: The Department thanks the commentator for the support.

82. Section 145.42(d) is supported. The set aside of 5% of the budget for the first three years and 2% a year thereafter is supported. (30)

Department response: The Department has revised the rule to keep the set-aside at 5% for all years. This is consistent with the EPA Part 97 rule.

83. The creation of a set aside for new sources is supported. (38)

Department response: The Department thanks the commentator for the support.

84. Section 145.42(d) would allocate to new sources based on the date the plan approval is issued. This section should be revised to allocate after the Department has determined that the plan approval application is complete. (39)

Department response: The final rule has been revised to delete the plan approval wording. The rule now requires a unit to request allowances at the more stringent of 0.15/0.17 or allowable emission rate.

85. Section 145.42(d)(5)(i) states that the Department will begin determining allowances at the time the NO<sub>x</sub> allocation request is received. This does not seem to be consistent with issuing allowances at the time the plan approval is issued. This section should be reviewed to make sure there is consistency. (39)

Department response: The approach is consistent. The referenced section indicates that the Department will review the request to determine if the request correctly calculates the allowances and limits the request to the correct number of years. Section 145.42(d)(5) allows the Department to correct the application if errors have been made.

#### Affected Sources

86. The regulation should be revised to be applicable to electric generating units that sell electricity to the grid and are greater than 25 megawatts as proposed by EPA. (3, 17, 18, 20, 22, 25, 26, 28, 35, 43)

Department response: The regulation has been changed as suggested.

87. The regulation should apply to electric generating units that are rated at greater than 25 megawatts. One commentator requests that the Department explain why there is a need for regulating 15 MW units or adopt the federal limits. (6, 45)

Department response: The regulation has been revised to follow the unit definition in the Section 126 remedy. The regulation now covers units rated at greater than 25 MW.

88. The affected units can be in the 15 to 25 megawatt range only if these sources are included in the inventory. (7, 18, 40)

Department response: The sources less than or equal to 25 megawatts are being deleted from the program.

89. Stationary gas turbines at natural gas transmission stations are non-condensing cycle, natural gas-fired turbines. These units need clarification of how to determine maximum heat input. Maximum heat input for non-condensing cycle, natural gas-fired turbines should be estimated using the lower heating value of the fuel, consistent with NSPS Subpart GG. (10)

Department response: The definition of maximum rated heat input uses the higher of the manufacturer's rated hourly heat input or the highest observed hourly heat input. No additional clarification is needed.

90. Proposed Section 145.4(1) should be revised to specify units greater than 25 megawatts. This change is consistent with the April 23, 1999 AQTAC recommendation. (28, 29)

Department response: The Department has made the recommended changes.

91. The nameplate capacity should be identified as the summer rating since the program is a summer program. A combustion turbine's capacity will change with air temperature. (29)

Department response: The Department has not made the suggested change. The EPA used the nameplate capacity when determining cost effective controls. These sources were then determined to contribute to ozone nonattainment. It is important that these sources provide emission reductions in order to assist in reducing ozone transport.

92. Pollution control devices that fire fossil fuel and otherwise seem to be affected units should be exempt. Refinery CO boilers used to control the release of CO from FCC units should be exempt from the rule. (12)

Department response: The Department has not revised the rule based on this comment. If the CO boilers meet the definition of affected unit, they should be controlled as a source that contributes to ozone nonattainment and ozone transport.

93. Section 145.4(2) should be revised to apply to electric generating units equal to or greater than 25 megawatts based on a unit summer net capacity. A unit that demonstrates this capacity at any time after January 1, 1995 should be covered. (16)

Department response: The regulation has been revised to apply to units rated at greater than 25 megawatts. This is consistent with the Section 110 and Section 126 rules and is the basis for the EPA determination of cost effective controls.

94. The proposed regulation should include an inventory of affected units and initial allowance allocations. A source cannot fully evaluate the program without knowing with some certainty how many allowances it will receive. (17)

Department response: The Department has not included an inventory of affected units in the regulation. As stated in the preamble to the proposed regulation, the regulation establishes a formula for the allocation of allowances. Because of the formula, a specific listing of allocations is not necessary in the regulation. The Department will use the formula to allocate the allowances to sources. The inventory of affected sources was developed by EPA. EPA published the inventory on May 14, 1999. Three opportunities for public comment were offered. No additional publications of the inventory by the Department are needed. Interested individuals may view the unit listing on EPA's web site at: [ftp://www.epa.gov/pub/scram001/modelingcenter/NOx\\_SIPcall/budget/May/](ftp://www.epa.gov/pub/scram001/modelingcenter/NOx_SIPcall/budget/May/) Even without the Department's publication of draft allocations, sources have the ability to review the regulation. The Department's proposed allocation method was slightly different from the method used by EPA in its proposed Section 126 remedy. (The difference was the allocation proposal to use the lower of 0.15 or 0.17 and the allowable.) The EPA published proposed allocations and affected source listings on October 21, 1998 and final allocation on January 18, 2000 in the Federal Register. Thus, sources have had the ability to analyze the impact of the proposed regulation.

95. The emission inventory should be published so that sources have an opportunity to review the data. The EPA inventory contains errors. (17)

Department response: The EPA inventory has been published several times. The inventory has been open for public comment on three different occasions. No additional opportunities are needed.

96. The Department should confirm that the shutdown units, Phillips and Brunot Island, are not subject to the rule until reactivated. Once reactivated, allowance allocations should be issued from Section 145.42(b) and (d). (20)

Department response: The Department agrees that these shutdown units are not subject to the provisions of the rule. Any operating units at Brunot Island are subject to the rule. The method of allocation will be determined when an application to operate the units is received.

97. The regulation should contain an exemption for sources that emit less than 25 tons per summer season. This provision was included in EPA's model rule. (26, 35, 41, 43, 45)

Department response: A provision exempting these sources has been added to the regulation. It is found at Section 145.4(b).

98. The regulation should be clarified to use the same source classification system as used by EPA. Specifically, a cogeneration unit that does not have a firm contract for sale should not be considered an electrical generating unit. (28)

Department response: The Department agrees that the EPA classification system should be used. Section 145.4 of the rule specifies how sources are classified.

99. The inclusion of sources rated at 15 megawatts or greater is beneficial to the environment and should be retained. (30, 39, 42)

Department response: The Department has changed the applicability criteria to 25 megawatts. This is consistent with the EPA model rule and finding of cost effective controls.

100. The industrial proposal to allow sources to take a permit cap to be exempted from the program is opposed. (30)

Department response: The Department has added a provision to provide permit caps for small emitting sources. The amount of the permit cap is subtracted from the trading budget to prevent double counting of emissions. Since the budget is preserved, there is no reason to oppose the concept.

101. Section 145.4 should be revised to exempt sources in iron and steel mills from the program. In the Federal Register (63 FR 57416) EPA stated that no additional control measures were assumed for source categories with relatively small NO<sub>x</sub> emissions. (35)

Department response: The EPA intended the statement to refer to small sources such as process heaters. EPA was not exempting large boilers at steel mills from the proposed program. These boilers are similar to other large industrial boilers and should be controlled in a similar manner. No change was made to the regulation.

102. No provision has been made to exclude sources that utilize byproduct fuels. It was not EPA's intent to regulate these sources. Coke oven gas and blast furnace gas should not be included in the program. (35)

Department response: EPA has determined that coke oven gas is a fossil fuel. EPA has determined that blast furnace gas is not a fossil fuel. No revision of the regulation is necessary.

103. The definition of boiler should be clarified. The current definition may include coke ovens. The ovens and other similar sources should be excluded from the program. (35)

Department response: The Department has reviewed the definition of boiler. It requires that the combustion device be used to produce heat and that the heat is transferred to recirculating water, steam or other medium. Existing coke ovens in Pennsylvania do not

transfer heat to recirculating water, steam or other medium and would not be subject to the rule.

104. The Section 145.4 should be clarified to define what is an EGU. Industrial sources that do not meet the EGU definition should not be in the EGU category. (39)

Department response: The section has been clarified. The Department is using the wording contained in the Part 97 rule.

105. Section 145.4 should have an exemption for low mass emitters as suggested by EPA in 40 CFR 96.4. Specific wording are suggested. (39)

Department response: The Department has added a provision for capping low mass emitters. Section 145.4 now includes a provision to allow these sources to have their permits modified under certain conditions.

#### Monitoring Requirements

106. The non-part 75 sources have revised their monitoring systems to comply with the requirements of the Chapter 123 allowance program. There is no reason to require these sources to change monitoring a second time for the new Chapter 145. The Chapter 145 monitoring should be the same as currently required by Chapter 123. One commentator asked that should monitoring changes be needed, the Board should provide an analysis of the additional costs. (5, 7, 13, 15, 18, 20, 22, 25, 26, 28, 29, 39, 45)

Department response: This issue was discussed with the Air Quality Technical Advisory Committee on May 21, 1999. The main concern was that certain sources have approved alternative monitoring plans under Chapter 123. The commentators would like to have these same systems approved under Chapter 145. At the May meeting, EPA stated that most of the alternative monitoring plans would only need minor changes to be approved under Part 75. The Department believes that it is important to have consistent monitoring requirements across all states involved with the SIP Call trading program. This assures that a ton of emissions measured in Pennsylvania is the same as a ton of emissions measured in any other state. Therefore, the final regulation retains the monitoring requirements. The Department has not estimated the additional cost of monitoring revisions. At the meeting with EPA, the EPA staff stated that the Part 75 rules will be revised to provide additional alternatives as currently provided in Chapter 123. It was EPA's technical judgement that only a very few sources would need to modify their monitors. Because there is no specific estimate of the number of sources that need to revise the monitors, the Department has not estimated the cost of the modifications.

107. The definition of "CEMS" requires a permanent record of NO<sub>x</sub> emissions expressed as tons per hour. The Electronic Data Report version 2.0 records pounds per hour. The definition should be changed to require the recording of pounds NO<sub>x</sub> per hour. One

commentator suggested that the EQB should incorporate a waiver process or reference an existing waiver process to deal with minor conflicts. (29, 45)

Department response: The Department agrees with the comment and has made the recommended change on the reporting of pounds of emissions. The monitoring provisions of 40 CFR Part 75 subpart H contain provisions to allow sources to petition the Administrator for modifications or changes to the monitoring rules. The Department believes that consistent monitoring at all sources in all states is important to the trading program. Therefore, the Administrator should oversee the monitoring waivers or changes.

108. Section 145.6 should be revised to allow data records to be kept at a central location or be made available upon request. Data may be stored off-site depending on the records management practices of various companies. (29, 45)

Department response: The Department has made the recommended change.

109. The regulation would adopt the new EPA monitoring requirements at 40 CFR 75. In particular, Part 75, section 75.19 creates difficulties for low mass emitter units. In addition, sources have recently invested in upgrading systems to meet the Chapter 123 monitoring requirements. Changing the monitoring requirements does not improve the representativeness of the data. (16)

Department response: The monitoring issues were discussed with the AQTAC at the May 21, 1999 meeting. EPA staff attended the meeting and explained why the monitoring requirements have been revised from the Chapter 123 requirements. In general, EPA is seeking to create a monitoring requirement that is applied consistently among all states. EPA states that the trading system must have uniform monitoring requirements if interstate trading is to work. At the AQTAC meeting, EPA specifically discussed the low mass emitter unit requirements. EPA believes that the Part 75 requirements do provide the necessary flexibility and are appropriate for these sources. Sources may apply to EPA for alternatives. EPA will approve alternatives and make the information available for all sources' information. A detailed summary of the discussions can be found in the May 21, 1999 AQTAC minutes.

110. The proposed section 145.71 does not contain a time limit for Department review of certification applications. This time limit was included in the EPA model rule and should be included in the final rule (26)

Department response: The Department has revised the rule to provide time limits for review.

111. Sections 145.70 and 145.74 should be modified with the correct references to either annual or seasonal reporting. (31, 39, 45)

Department response: The change has been made.

112. Section 145.71 contains a timing problem for certification of monitors. It is unclear what the status of the monitors and monitored data is if the state fails to approve a monitor within 120 days. If a monitor is automatically approved, how will the source be advised of this decision. It is recommended that the provisions of 40 CFR 96.74 be adopted to clarify these issues. (31, 45)

Department response: The Department has modified the section to include the 120-day provision.

113. Section 145.74(d)(3)(iii) just applies to sources reporting during the control period. It should be deleted if annual reporting is required. (31)

Department response: The regulation has been revised to allow certain sources to report during the control period rather than annually. Therefore, the section has been retained.

114. While the current Chapter 123 monitoring requirements should be retained, the commentator would not support retaining these requirements if Pennsylvania sources would be precluded from participating in interstate trading. (39)

Department response: The Department is retaining the proposed Chapter 145 monitoring requirements. This will allow sources to participate in interstate trades. As stated in the response to comment 101, the change will affect some sources. However, EPA will work with the Department and source to minimize any negative impacts.

115. Section 145.70(1)(i) should be revised to state that a flow monitor is necessary only when required by Part 75. (39)

Department response: No revision is necessary. The paragraph lists a number of systems and then states that the implementation is to be done in accordance with 40 CFR 75.72 and 75.76. If these sections do not require flow monitors under certain conditions, then Section 145.70 is read to not require the flow monitors.

116. Section 145.70 should allow a period of time for "shakedown" of equipment for troubleshooting and debugging. NO<sub>x</sub> allowances should not be made until after the shakedown period. (39)

Department response: The Department disagrees. The allowance program covers all NO<sub>x</sub> emissions including times of problems. Using the commentator's recommendation would result in sources having excess emissions and not counting that toward the budget or cap.

117. The section 145.70(3)(ii) should be revised to clarify that the data collected during the initial CEMS certification process not be reported for compliance purposes. (39)

Department response: The Department disagrees. These emissions must be recorded and reported in order to demonstrate that the budget is achieved. Delays in certification approval would give units an opportunity to have high emissions and not count them toward the cap. This is contrary to the intent of the trading program. This should not be a burden for sources since they have the entire control period to demonstrate compliance with the cap.

118. Section 145.74(d)(1)(iii) should be revised to require the reporting of data after the date of the certification. Data collected prior to the certification date should not be required. (39)

Department response: All data must be reported once a unit starts operation. Sources are encouraged to certify monitors prior to the start of the program in order to avoid any problems.

119. Section 145.75 should list the alternatives that are allowed. (39)

Department response: EPA maintains a list of approved alternatives to the Part 75 monitoring requirements. No change to the rule is necessary.

120. All sources covered by the program should be required to have CEMS. The rules should follow the EPA monitoring requirements. (40)

Department response: The rule retains the requirement to use the Part 75 monitoring requirements. In some circumstances, this may allow sources to monitor without CEMs.

121. The monitoring requirements specify a moisture analyzer. However, there are no certifiable analyzers on the market. (1)

Department response: Many sources now monitor H<sub>2</sub>O for correction of results. Most use a combination of dry O<sub>2</sub> and wet O<sub>2</sub> measurement to do the calculation, although some are using infrared to measure H<sub>2</sub>O directly.

122. Section 145.72(a) should provide for an alternative. Many software vendors will not provide certification of their data substitution algorithms. (1)

Department response: Both the SO<sub>2</sub> and NO<sub>x</sub> programs require data substitution. If the vendor is not willing to back his substitution algorithm, then the source is encouraged to find a vendor that will support its software.

#### Heat Input Data

123. The Department should use the corrected heat input data collected by EPA. (1)

Department response: The Department agrees with the comment. The corrected inventory published by EPA is the basis for the allocations.

124. Section 142(a)(2) should be revised to either eliminate the listing of heat input sources or to recognize that CEM data is more accurate than emission statements. Emission statements provide average information and do not report the actual heat input data. (5, 9, 13, 15)

Department response: The section has been revised to eliminate the category listing. Sources have had three opportunities to comment on the accuracy of this data. Comments were received by EPA for the November 7, 1997 notice of proposed rulemaking (62 FR 60318), the notice of supplemental rulemaking published on May 11, 1998 (63 FR 25903), and under the notice of final rulemaking published on October 27, 1998 (63 FR 57356). Judicial review of the data is also available under Section 307 of the Clean Air Act.

125. The regulation should be revised to allow sources an opportunity to demonstrate that the 1995 through 1997 years do not include two representative years for that facility's operations. (15)

Department response: The Department is not including this provision in the regulation. In allocating the allowances, each source is given the opportunity to normalize its operations. These normalized operations are allocated at 0.15 lb/mmBtu rate. This initial allocation is then adjusted upward to reflect the growth contained in the budget. Should a specific source still have problems, the market mechanisms are available to allow the acquiring of allowances to provide increased operations.

126. Heat input data for four sources were submitted to EPA. The Department should use this data even if EPA does not modify its inventory. (20)

Department response: The Department has not made the suggested changes. EPA responded to the comment on the inventory. The shutdown sources at Phillips and Brunot Island were included in the final EPA inventory with the appropriate heat input. EPA did not change the heat input for Elrama and Cheswick stations since the commentator did not provide justification that the EPA acid rain data was incorrect. The Department will use the final EPA inventory.

127. The final regulations should allow the opportunity for units that cannot directly monitor heat input to calculate heat input from the fuel throughput and gross calorific values. (25)

Department response: Heat input monitoring generally does measure fuel throughput and gross calorific values. The actual monitoring method is specified in the monitoring plan and must be approvable under Part 75.

## Opt-In Provisions

128. The opt-in provisions are supported. However, sources should not need a full season of monitored data prior to permit approval. Sources should be required to comply with the monitoring provisions prior to issuance of the opt-in permit. This is important for non-utility sources because of the need for flexibility in modifying operations. (12)

Department response: The purpose of the one season monitoring requirement is to develop a base for allocations. The allocation would then be calculated using data of equal quality as other affected sources. The result is that the allowances are of equal value. The Department understands that this may reduce a facility's flexibility to modify its operations. However, in a market based regulation sources are responsible for being proactive. Those sources that anticipate the need to opt-in should begin monitoring as soon as possible.

129. It is unclear what the status would be for a smaller source, rated less than 250 mmBtu/hr, that increases heat input and is now over 250 mmBtu/hr. It is not clear if this source is a new source. (12)

Department response: This issue is addressed by Section 145.87 for opt-in sources. Opt-in sources that increase capacity or otherwise become affected units are allocated under Section 145.42 when they become affected units. Sources that have not opted-in and later become affected units are allocated under Section 145.42(d). In this case, the budget does not increase in order to control growth. Heat input for these sources is determined based on data collected in accordance with Part 75 monitoring requirements.

130. The opt-in provisions are unclear as they apply to cement kilns. The definition of unit seems to preclude cement kilns from opting into the program. The regulation should be revised to allow all sources covered by the proposed Chapter 145 be allowed to opt into the program. This could be a change in the definition of "unit" or a change in the opt-in section. (14, 24, 27, 45)

Department response: Section 145.80 has been revised to allow any unit that meets emits through a stack and can meet the monitoring requirements of Part 75 to opt-in to the program. A unit must be either a boiler, turbine, or combined cycle system. A cement kiln would not qualify to opt into the program. This change is consistent with the Section 126 remedy.

131. Section 145.80 can be interpreted to allow sources in other states to opt into the Pennsylvania program. (31)

Department response: Sources from other states cannot opt into the Pennsylvania program and expand the Pennsylvania budget.

132. The excess emissions penalty should be consistent for opt in and budget units. (39)

Department response: The excess emissions penalty is the same for both types of units. Section 145.86(b)(2) specifies that excess emissions be corrected as specified in Section 145.54(d). This section contains the penalty provisions that apply to all budget units. No change is necessary to the regulation.

### Permitting

133. Section 145.21(b)(1) requires a permit application to be filed within 6 months of adoption of the regulation. This is much earlier than required by the federal rule. The Department should explain why this time schedule is needed. This section does not provide a schedule for the Department to respond to the applications. (45)

Department response: The Department initially proposed an earlier time schedule for permit applications in order to allow sufficient time to process the applications. The Department has revised the permitting requirement in the final regulation by deleting the permitting sections.

134. Permitting must be kept as simple and timely as possible. The requirement in Section 145.5(c)(2) to submit a permit application 18 months prior to restart is unnecessary. (12, 26)

Department response: The Department has eliminated the permit application process.

135. Section 145.6 does not contain a requirement for automatic permit amendments as contained in 40 CFR 96.6(c)(8). How does the state intend to cover automatic permit amendments? (31, 45)

Department response: The Department has deleted that explicit requirement for a NO<sub>x</sub> permit. The permit requirements of Chapter 127 describe how permitting occurs in Pennsylvania. Chapter 127 describes how permits are amended and issued. No additional change is necessary to Chapter 145.

136. Section 145.6(f) does not include the liability provisions of 40 CFR 96.6(f)(1) and (2). Do state laws and regulations already address this concern? (31, 45)

Department response: These provisions are not necessary. Section 8 of the Air Pollution Control Act states "It shall be unlawful ... to violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or § 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this act."

137. There appears to be a typographical error in Section 145.6(e)(1)(ii). (31)

Department response: The typographical error has been corrected.

138. Section 145.21 does not contain a “duty to reapply” requirement as is in 40 CFR 96.21(c). Do other state permitting requirements address this issue? A similar problem occurs in Section 145.83. (31)

Department response: The Department has deleted the section. Sources are not required to reapply for permits under this Chapter 145.

139. Section 145.25 does not address automatic permit amendments. Does the section require amendments of the permits for each allowance trade? This may not be a problem if Section 145.23(b) addresses the concern. (31)

Department response: The Department has deleted the permit requirements of Sections 145.20 through 145.25. Permits will be issued as specified in Chapter 127. The Chapter 127 state operating and Title V permit programs have been federally approved.

140. Section 145.20 should be revised to state that the NO<sub>x</sub> budget permit may be part of a facility’s Title V permit. (39)

Department response: The section has been deleted. The Department will incorporate the NO<sub>x</sub> budget program requirements into the Title V permits as required under Chapter 127.

141. General permits should not be used under this program. (40)

Department response: The Department agrees. No change to the regulation is necessary.

#### Energy Efficiency Credits

142. The Environmental Protection Agency has issued guidance which allow states to set aside 5-15% of the NO<sub>x</sub> trading budget for energy efficiency improvements. Improvements in the efficiency of equipment will reduce the demand for energy and reduce NO<sub>x</sub> emissions. (8, 30, 32, 40)

Department response: The Department has reviewed the initial guidance issued by the Environmental Protection Agency on March, 1999. EPA states that this is the first of three guidance documents that will be issued on energy efficiency. The March 1999 guidance document focuses on the elements for a state to consider in deciding whether or not to do a set aside and how many allowances should be set aside. The second guidance document was issued in April 2000 and discusses the design elements for the administration and quantification of allowances. The third guidance document will be issued in 2000 and will discuss measurement and verification of reductions. The Department is not including explicit energy efficiency provisions in the regulation at this time. The Department will forward the guidance documents to the AQTAC.

143. The regulation should be revised to set aside 10 percent of the electric generating unit budget or 4,940 allowances for use by companies, manufacturers, schools, hospitals, energy service companies, aggregators and others who invest in energy efficiency and renewable energy. To qualify for these credits the energy efficiency improvement should not be "business as usual" improvement. Rather, there should be some new investment in energy efficiency or some new commitment to renewable energy to obtain the allowance. Companies that invest in energy efficiency become stronger business competitors. Savings could be used to further spur economic growth. The use of these credits could help transition the state to a renewable energy generation base. (30, 34, 42)

Department response: The Department agrees that there would be environmental and economic benefits to an energy efficiency credit program. However, the Department has not included energy efficiency in the final regulation. The Department will continue to work with AQTAC on this issue.

#### Trading and Compliance Issues

144. The NO<sub>x</sub> allowance transfer deadline should be revised to December 31 from November 30. One commentator requested an explanation of the need for the November 30 deadline. (13, 17, 25, 29, 45)

Department response: The Department has not made the suggested revision. The true up date of November 30 allows two months to acquire additional allowances to demonstrate compliance. Sources will have had four years of experience in demonstrating compliance with an allocation under the Chapter 123 trading rules. The loss of one month for true up should not affect these sources because of the experience gained during the Chapter 123 program. Maintaining the same transfer deadline as other states allows Pennsylvania sources to participate in the interstate trading program since one allowance tracking system would be needed.

145. The deadline for submission of a compliance certification report should be changed to December 31 in order to be consistent with the current Chapter 123 requirements. One commentator asked that an explanation be provided why November 30 was chosen. (13, 25, 29, 45)

Department response: The Department has not made the suggested revision. The requirement to submit the compliance certification by November 30 allows two months after the end of the ozone season to prepare the submission. Sources will have had four years of experience preparing compliance certifications under the Chapter 123 trading rules. The loss of one month for submission should not affect these sources because of the experience gained during the Chapter 123 program. The acid rain program currently requires sources to submit compliance certifications within 60 days of the end of the control period. The November 1 date is consistent with this requirement.

146. Section 145.54(d)(1) should be revised to require the surrender of 1 allowance rather than 3 when a source is out of compliance. Because the budget is so small there is a constraint on emissions and the potential for units to have unused allowances to bank will be low. The provision is unnecessary and unreasonable. (13, 18, 21, 25, 29)

Department response: The recommended change has not been made. The penalty provisions provide a strong compliance incentive.

147. The determination of the number of days of violation should be based on a demonstration of when allowances were unavailable. The regulation should not assume that every day of the ozone season was a violation. (13, 18, 21, 25, 29, 45)

Department response: The recommended change has not been made. The penalty provisions provide a strong compliance incentive.

148. Section 145.54(d)(3) indicates that the fines will be assessed under the Clean Air Act or the act. The Board should explain which specific sections of the Clean Air Act or the act apply. (45)

Department response: The Department has not revised the regulation. The subsection (d)(3) states that an allowance deduction for improper account balances does not exempt a source from monetary or other penalties as provided under the Clean Air Act or act. This subsection clarifies that there may be other penalties and provides further incentive to sources to comply with the rule.

149. The proposed requirement for withdrawal of banked allowances under Section 145.55(b)(3) should be deleted. The budget is so small that inter-temporal trading will not occur. Sources with small banks should not be penalized with a 2:1 withdrawal ratio. Because of the flow control, no source will be comfortable with its bank and will want to build it larger ensuring that flow control is triggered. All allowances should be available at a 1:1 withdrawal rate. (29)

Department response: The recommended change has not been made. The banking provisions of the EPA model rule are required in order to participate in the interstate trading program. This provision is included in the EPA model rule to control excess withdrawals during a particular ozone season. EPA describes in detail the reasons for a flow control program. (63 FR57473) The Department has moved the flow control provisions from Section 145.55 to Section 145.54 relating to compliance.

150. The Section 145.54(d) should be revised to allow a source to recommend a lower surrender ratio. (28)

Department response: The Department has retained the penalty provisions as proposed. This will ensure that sources are treated equally in all states.

151. Sections 145.10(c) and (d), 145.11(b), and 145.12(a) and (b) contain a timing problem. This can be solved by having the account certificate of representation submitted to EPA and a copy sent to the state. The receipt date would be when the Administrator receives the form. (31)

Department response: The change has not been made. Sources are responsible for submitting the material in early enough to allow the Department and NO<sub>x</sub> Budget Administrator sufficient time to process the documents.

152. There is a typographical error in Section 145.50(a). EPA will establish an overdraft account when there are two sources or more at a facility. (31)

Department response: The section has been corrected.

153. Section 145.54(e)(2) should be revised to reference Section 145.54(b)(2)(I). (31)

Department response: The change has been made as requested.

154. The penalty provisions of Section 145.6 are overly onerous. Errors related to accidental monitoring problems (calibration errors) are penalized the same as overt violations. These violations should be penalized differently. (39)

Department response: The enforcement responses are the same. In both cases, errors are made estimating the actual emissions. Under a market approach, all NO<sub>x</sub> emissions must be accounted for in a consistent manner. To do otherwise would jeopardize the market value of the allowances and reduce the savings benefit of the market.

155. Section 145.31 should be revised to place a time limit on the Department and EPA to conduct reviews or audits. (39)

Department response: The Department disagrees with the comment. The purpose of the audit is to be able to verify that monitoring and reporting is done correctly. If the Department or Administrator finds that a source has incorrectly accounted for its allowances, then there should be an adjustment to the account. This puts those sources that monitor and report correctly on an even basis with those with incorrect monitoring and reporting. The Department and Administrator should have the ability to audit the records as necessary. Due to resource constraints, audits cannot be done for every source within a short time period after the November 30 true up date. This provision is no different than the Department's current authority to review records and determine compliance for any other regulation. No change has been made to the regulation.

156. Section 145.54(b)(2) should be modified to clarify which section subparagraphs i and ii reference. (39)

Department response: The section has been modified to clarify the appropriate reference.

157. The penalty provision of a 3:1 offset contained in Section 145.54(d)(1) are supported. In addition, each fraction of each allowance should be considered a violation. (40)

Department response: The penalty provision has not been changed. The allowance reporting system requires sources to round data in a specific manner. This data is then used to determine compliance through the deduction process. Sources should not be penalized because they round as required by the regulations.

158. The number of days of violation should be each and every day of violation. The phrase "unless the owners and operators of the unit demonstrate that a lesser number of days should be considered" should be deleted. (40)

Department response: The phrase has been retained. The phrase gives the source the opportunity to make a demonstration. However, the onus is on the source to demonstrate that the alternative is more appropriate than assuming each day is a violation. The Department will evaluate each demonstration on a case-by-case basis.

159. The Department should establish a clearing house to assist sources conducting energy efficiency or renewable energy projects. (42)

Department response: The Department is not implementing the energy efficiency or renewable concepts at this time. These provisions will be further discussed with the Air Quality Technical Advisory Committee for additional evaluation. Sources interested in energy efficiency projects may contact EPA for additional information.

160. Interstate trades should only be allowed when states have equivalent programs that will prevent double counting of emission reductions. (40)

Department response: The interstate trades can only occur between states that participate in the EPA tracking system. EPA, acting as the NO<sub>x</sub> Budget Administrator, will assign discrete identifying numbers to each allowance. This will prevent double counting.

#### Emission Reduction Credits

161. Section 145.90(b) should be deleted. This section inappropriately restricts the generation of emission reduction credits which are necessary for the construction or modification of stationary sources. Banked credits are preserved allowances and represent a historical perspective of emissions. Emission reduction credits are a future authorization of emissions. (18, 29)

Department response: The Department has revised the section. However, ERCs must be surplus and it may be difficult to demonstrate that ERCs resulting from banked allowances meet that requirement.

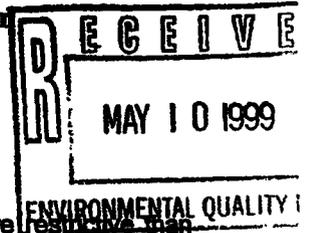
162. Section 145.90 would require allowances to be deducted in certain circumstances. How will this be implemented? (31)

**Department response:** The Department maintains a registry of all ERC applications and approvals for the state. Transactions from this registry will be compared to the allowance registry to determine if adjustments to the allowance should be made.

**Attachment A**  
**One-Page Summaries**



**Proposed Revisions to 25 PA Code Chapters 123 and new Chapter 145  
Interstate Ozone Transport Reduction Implementation Regulations  
Summary of the Comments of the Electric Power Generation Association  
Submitted May 10, 1999**



**Issue:** §145.4(2) - Unit Applicability Below 25 MW - The proposed applicability criterion is more restrictive than federal requirements (25 MW cutoff) because the PA proposal would apply to units that serve generators greater than or equal to 15 megawatts.

**Recommendation:** Consistent with the April 23, 1999 ACTAC recommendation, revise the applicability criterion upward to cover units that serve generators greater than or equal to 25 megawatts. Also summer net unit capability should be designated as the applicable criterion.

**Issue:** §145.42 Single Year Allocation Methodology - Single year allocations based on a unit's heat input four years prior to the year for which the allocation is being calculated would not reflect normal utilization of a unit and could result in an abnormally high or low unit allocation.

**Recommendation:** Revise Section 145.42 to reflect a three-year allocation approach using the same methodology proposed for the initial allocation period (2003-2005).

**Issue:** §145.42(b)(1) Overall NO<sub>x</sub> Allocation Methodology - §145.42(b)(1), which prescribes the manner in which NO<sub>x</sub> allowances will be allocated, deviates from the language in the federal rule.

**Recommendation:** Revise §145.42(b)(1) to be consistent with the federal rule language, as unanimously approved by the PA DEP Air Quality Technical Advisory Committee.

**Issue:** §145.44(c) - Carry Forward Banking Limitations - Limiting the number of banked allowances carried forward from 2002 to 2003 would be environmentally counterproductive because such limitation would be an economic disincentive to early emission reductions.

**Recommendation:** Section 145.55(c) should be deleted. The final rule should not provide any restrictions on the number of banked allowances carried forward from 2002 to 2003.

**Issue:** §145.70 General Monitoring Requirements - Proposed Chapter 145 monitoring requirements are significantly different from those in the existing Chapter 123. These changes will result in the surrender of allowances for emissions which never occur and also require sources currently compliant with Chapter 123 to expend significant additional monies for software and hardware with no commensurate increase in the accuracy of the data.

**Recommendation:** The proposed regulations should incorporate the existing monitoring requirements of 25 PA Chapter 123.108, which were incorporated from the Ozone Transport Commission (OTC) "NO<sub>x</sub> Model Rule".

**Issue:** Subchapter B Diesel Generator Exemption - Subchapter B sets prescriptive emission limits for internal combustion engines that would require extremely costly emission control technology for negligible NO<sub>x</sub> emissions. The subchapter should provide an appropriate exemption for low utilization diesel generators.

**Recommendation:** §145.101(d) should be revised to focus simply on operating hours, per each diesel generator using the following suggested language: §145.101(d) *A diesel generator which has a maximum cumulative operation of 208 hours per control period is exempt from the requirements of this subchapter.*

Summary of Comments – ARIPPA  
Proposed Ozone Transport Regulation – 25 Pa. Code Chapter 145

1. The allocation scheme provided for in the Board's Proposed Ozone Transport Rule is based upon both an emission rate and the affected source's heat input. The proposed regulation would determine heat input for each affected source based upon a hierarchy of heat input data reported by the source. The proposed rule inappropriately establishes a conclusive preference for heat input data reported by each source within its annual emission reports. The emission reporting form is not designed to elicit accurate heat input data, but rather emission information. Individual sources have available sources of data that provide more accurate heat input information. The Proposed Ozone Transport Rule should allow for a case-by-case determination of appropriate sources of heat input data.
2. Like EPA's Model Rule, the Proposed Ozone Transport Rule provides for an initial allocation of NOx allowances to affected sources based upon heat input data recorded for the 1995 through 1997 ozone seasons. The Department's data for Pennsylvania's affected sources identifies inaccuracies in the heat input inventory maintained by EPA. Therefore, the Proposed Ozone Transport Rule should not merely incorporate inaccurate heat inventory information compiled by EPA, but rather base initial allowance allocations upon the Department's more accurate, source-specific information.
3. The monitoring scheme included within the Board's Proposed Ozone Transport Rule imposes additional monitoring requirements upon affected sources. Specifically, the Proposed Ozone Transport Rule would require sources that have recently incurred significant costs to comply with the Board's recent NOx Allowance Regulations to incur yet additional costs to comply with the Proposed Ozone Transport Rule. The Board's proposed regulation should be modified to ensure that the monitoring requirements under the Proposed Ozone Transport Rule are consistent with the requirements imposed under the existing NOx Allowance Regulations.
4. EPA's Model Rule would provide for an allocation of NOx Allowances to all regulated electric generating units based upon an emission rate of 0.15 lbs-NOx per million BTU ("MMBTU") of heat input. However, the Board's Proposed Ozone Transport Rule would reduce the allocation of NOx allowances for sources that are subject to a NOx permit rate less than 0.15 lbs/MMBtu. Thus, the Board's proposed rule departs from EPA's model rule by providing less favorable treatment to the cleanest sources in Pennsylvania subject to this proposed rulemaking. The Board should modify the Proposed Ozone Transport Rule to provide for a uniform and equitable allocation of NOx allowances to all sources based upon the 0.15 lb/MMBtu emission rate included within EPA's Model Rule.
5. EPA's NOx SIP Call Rule provides for the distribution of NOx allowances to certain states, including Pennsylvania, from a state-specific compliance supplement pool, to assist such states in complying with the emission limitations imposed under the NOx SIP Call Rule. The Board and the Department should ensure that the Commonwealth's ozone transport regulatory program protects Pennsylvania sources in the determination of those banked NOx allowances which count against the Commonwealth's compliance supplement pool. ARIPPA recommends that the Commonwealth advocate to EPA that only those banked allowances held at the conclusion of 2002 in the authorized accounts of Pennsylvania-based affected sources should be aggregated against this cap.

May 7, 1999

**Essroc Cement Corp. Comments Regarding the Notice of Proposed Rulemaking  
by the Department of Environmental Protection and Environmental Quality Board  
– 25 Pa. Code Chapter 145. Interstate Ozone Transport Reduction**

Essroc Cement Corp. (Essroc) owns and operates three cement plants Pennsylvania and has the capacity to produce over 2,500,000 tons of portland and masonry cement products per year. Essroc employs almost 500 employees at its Corporate office and operating facilities.

**Pursuant to §4004.2 (c) of the Pennsylvania Air Pollution Control Act, the Pennsylvania NOx State Implementation Plan (SIP) Call regulations should not be more stringent than the Federal rule.**

As proposed, the FIP would require that cement plants install and operate effective NOx-control equipment. This technology-application requirement can be satisfied by installing one of the following: (1) Low-NO<sub>x</sub> burners (LNB), (2) Mid-kiln firing systems, or, (3) Alternative NOx reduction technologies or controls that achieve at least the same emission decreases as the first two options. In addition, "[T]he FIP does not propose an emissions rate requirement nor does it propose an emissions cap for cement kilns."<sup>1</sup>

**The final rule should allow for flexibility and should include NOx reduction technologies and controls (low NOx burners and mid-kiln firing systems) and should not propose an emission limit for portland cement kilns which have installed these control technologies.**

Essroc urges the State to consider alternative control technologies as a basis for satisfying the requirement for NOx reductions from cement manufacturing facilities. The FIP details the requirements to be implemented in the event any state subject to the NOx SIP Call fails to implement approved regulations. The proposed FIP for cement manufacturing provides flexibility by incorporation of several options to comply with its requirements. The recommended three options are listed above.

**Flexibility and economic consideration should be taken into account for installation of alternative NOx-reduction technologies or controls**

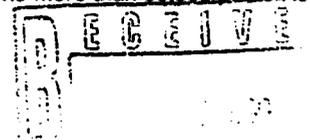
If a cement manufacturing plant cannot install and/or operate LNBs or mid-kiln injection, Essroc recommends the rule allow for the use of other alternative NOx reduction technologies or controls. These technologies would be approved by the PADEP and the USEPA on a case by case basis and must either achieve the emission rate based guidance level or reduce NOx emissions from the 1995 baseline (as determined in the Pennsylvania Air Information Management System Database) by at least 30% during the control season. The use of the alternative control technology should provide for a case by case economic consideration. Essroc recommends that under no circumstances should a cement manufacturing plant be forced to install an alternative control technology which exceeds a cost-effectiveness of more than \$5,000<sup>2</sup> per ton of NOx reduced. The cost effectiveness of an alternative control technology should be calculated using the methodology codified at 25 Pa. Code §129.92 - RACT proposal requirements.

In conclusion, Essroc objects to the PADEP adoption of standards that are more stringent than federally required and recommends that the PADEP modify its proposed rule to include a cost-effectiveness cap and the following options:

- (1) The installation of a Low-NOx Burner; or
- (2) The installation of mid-kiln system fuel firing equipment; or
- (3) The use of an alternate control that will achieve similar NOx reductions as compared to the two options above.

<sup>1</sup> April 22, 1999 letter from Doug Grano (USEPA) to Tom Carter (American Portland Cement Alliance).

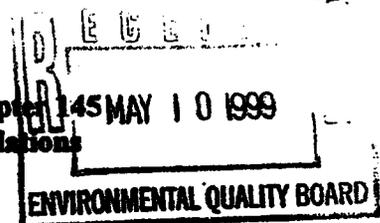
<sup>2</sup> Section II(A)(3)(f) and Section II(D)(1)(b) respectively clearly state that an average of approximately \$2,000 per ton of NOx removed is highly cost-effective and that NOx technologies costing no more than \$5,000 per ton is highly cost effective for cement manufacturing sources.



**Executive Summary -- Allegheny Power  
Comments on Proposed Amendments to  
25 PA Code Chapters 123 and 145  
Interstate Ozone Transport Reduction  
May 7, 1999**

1. Implementation of final regulation should be contingent on the outcome of current litigation challenging the legality of the EPA's NOx SIP call. The sole purpose of the proposed rulemaking is to respond to the NOx SIP Call regulation published by the U.S. Environmental Protection Agency on October 27, 1998. However, the EPA's SIP call regulation is the subject of a legal challenge (Michigan, et al v. EPA, Case No. 98-1497 and consolidated cases, D.C. Circuit). Consequently, some or all of the SIP call could be invalidated or revised. Allegheny Power recommends the Pennsylvania Department of Environmental Protection (Department) include language in the final rulemaking that would revoke implementation of the rule subject to the outcome of the litigation.
2. This rulemaking should be re-proposed upon revision of affected source sectors and emission reduction obligations. We support the Department's overall approach to include the same source sectors and associated emission reduction obligations as were proposed in the EPA's NOx SIP Call rulemaking. However, should the Department decide to revise either the source sector budgets or emission reduction obligations contained in this proposed rulemaking, we request that the rule be re-proposed for additional public comment prior to final adoption.
3. EQB Question No. 1: Distribution of NOx allowances from the compliance supplement pool should be based on banked allowances generated under Chapter 123.
4. EQB Question No. 2: Emission rates used to calculate the NOx allowance allocations for EGU sources should be equal to 0.15 lb./mmBtu. Allegheny Power recommends the Department calculate the NOx allowance allocations for EGU sources using 0.15 lb./mmBtu, regardless of the sources permitted emission rate. This approach is consistent with the EPA's Part 96 model rule requirements.
5. The allocation methodology should be the same for all affected EGU sources. Regardless of whether or not the Department chooses to maintain the "allowable emission level" provision, Allegheny Power would strongly object to any special provision for independent power producers that would apply a sources maximum heat input rating to calculate their allocation rather than actual heat input.
6. EQB Question No. 3: The electric generating unit NOx budget needs to be revised to include the sources less than 25 MW that are affected sources under the proposed rule. If the budget can't be revised, Allegheny Power objects to the inclusion of units less than 25 MW.
7. NOx allocation set aside for new sources should be reduced. The Department has proposed a new source NOx allocation set aside equal to 5% of the state budgets for both the electric generating units budget and the non-electric generating units budget during the initial 2003-2005 control periods and 2% for all subsequent control periods. Allegheny Power recommends the Department reduce the size of the new source set-aside pool to 3% for the initial 2003-05 allocation period and 1% for all subsequent control periods.
8. Timing requirements for NOx allowance allocations is reasonable.
9. Heat input used for calculating NOx allowance allocations should be based on best two-out-of-three periods. We do not support the Department's proposed methodology to use the unit's heat input from the single control period in the year that is four years before the year of subsequent allocation periods beginning 2006 and thereafter. For instance, heat input for 2002 would be used to calculate the 2006 allocation. Instead, we recommend the Department to use the average of the two highest amounts of the unit's heat input for the three control periods that begin six years before the year of subsequent allocation periods.
10. Penalties for failure to meet source compliance requirements are too stringent.

**Proposed Revisions to 25 PA Code Chapters 123 and new Chapter 145  
Interstate Ozone Transport Reduction Implementation Regulations  
Summary of Duquesne Light Company Comments  
Submitted May 10, 1999**



Implementing this rule will subject all Pennsylvania electric generators to an intolerably competitive disadvantage if other states do not adopt essentially identical requirements on the same schedule. The EQB should insure that Pennsylvania does not get out in front of this Program if other states cited in the SIP Call do not follow-through with their rulemakings.

The 1992 Amendments to the PA Air Pollution Control Act requires substantive review and discussion of control strategies adopted in State Implementation Plans. The PA DEP limited discussion of this rulemaking to implementation issues only despite the enormous policy, economic and air quality implications of this rule. The EQB should be acutely aware of this serious shortfall to the regulation development process.

**Issue: §145.4(2) - Unit Applicability Below 25 MW -** The proposed applicability criterion is more restrictive than federal requirements (25 MW cutoff) because the PA proposal would apply to units that serve generators greater than or equal to 15 megawatts.

**Recommendation:** Consistent with the April 23, 1999 ACTAC recommendation, revise the applicability criterion upward to cover units that serve generators greater than or equal to 25 megawatts. Also summer net unit capability should be designated as the applicable criterion.

**Issue: §145.42 Single Year Allocation Methodology -** Single year allocations based on a unit's heat input four years prior to the year for which the allocation is being calculated would not reflect normal utilization of a unit and could result in an abnormally high or low unit allocation.

**Recommendations:** Revise Section 145.42 to reflect a three-year allocation approach using the same methodology proposed for the initial allocation period (2003-2005).

**Issue: §145.42(b)(1) Overall NO<sub>x</sub> Allocation Methodology -** §145.42(b)(1), which prescribes the manner in which NO<sub>x</sub> allowances will be allocated, deviates from the language in the federal rule.

**Recommendation:** Revise §145.42(b)(1) to be consistent with the federal rule language, as unanimously approved by the PA DEP Air Quality Technical Advisory Committee.

**Issue: §145.44(c) - Carry Forward Banking Limitations -** Limiting the number of banked allowances carried forward from 2002 to 2003 would be environmentally counterproductive because such limitation would be an economic disincentive to early emission reductions.

**Recommendation:** Section 145.55(c) should be deleted. The final rule should not provide any restrictions on the number of banked allowances carried forward from 2002 to 2003.

**Issue: §145.70 General Monitoring Requirements -** Proposed Chapter 145 monitoring requirements are significantly different from those in the existing Chapter 123. These changes will result in the surrender of allowances for emissions which never occur and also require sources currently compliant with Chapter 123 to expend significant additional monies for software and hardware with no commensurate increase in the accuracy of the data.

**Recommendation:** The proposed regulations should incorporate the existing monitoring requirements of 25 PA Chapter 123.108, which were incorporated from the Ozone Transport Commission (OTC) "NO<sub>x</sub> Model Rule".

**Issue: Subchapter B Diesel Generator Exemption -** Subchapter B sets prescriptive emission limits for internal combustion engines that would require extremely costly emission control technology for negligible NO<sub>x</sub> emissions. The subchapter should provide an appropriate exemption for low utilization diesel generators.

**Recommendation:** §145.101(d) should be revised to focus simply on operating hours, per each diesel generator using the following suggested language: §145.101(d) *A diesel generator which has a maximum cumulative operation of 208 hours per control period is exempt from the requirements of this subchapter.*

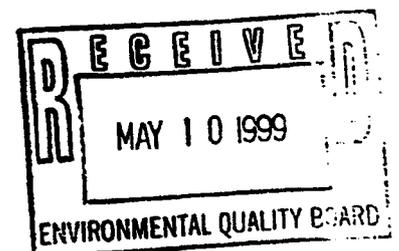
**TRANSCONTINENTAL GAS PIPE LINE CORPORATION'S ONE PAGE  
SUMMARY OF ITS WRITTEN COMMENTS ON THE INTERSTATE  
OZONE TRANSPORT REDUCTION PROPOSED RULEMAKING**

Transcontinental Gas Pipe Line Corporation ("Transco") has submitted detailed written comments on the Environmental Quality Board's ("Board") Interstate Ozone Transport Reduction proposal published in the Pennsylvania Bulletin on March 6, 1999. Transco's written comments focus primarily on the proposed new Chapter 145, Subchapter B, relating to NOx emission limitations for certain stationary reciprocating internal combustion engines.

Transco supports state flexibility in approving control measures to achieve the emission reductions required by the Environmental Protection Agency's ("EPA") NOx SIP Call. Unfortunately, the Board, in proposing the new Subchapter B, has relied solely upon the EPA's proposed Federal Implementation Plan ("FIP") published in the Federal Register on October 21, 1998. However, EPA appears to have changed its position on regulating internal combustion engines. On May 6, 1999 (after Transco's written comments were prepared), EPA posted on its Technology Transfer Network revisions to the NOx SIP Call and the associated emission budget inventories. EPA now intends to include in the emissions budget inventory only those internal combustion engines with 1995 emissions greater than one ton of NOx per day. Transco supports the EPA's May 6, 1999 revisions to the NOx SIP Call and the associated emissions inventories.

In the proposed FIP, EPA erroneously included internal combustion engines with a rated capacity greater than 2400 bhp instead of engines with emissions greater than one ton per day of NOx. Indeed, this is the same threshold included in the Board's proposed rule. EPA concedes that the proposed NOx FIP emission limitation represents the use of selective catalytic reduction control ("SCR"). However, as discussed in Transco's written comments, SCR control is not presently technically or economically feasible on variable load engines. Indeed, Transco's engines, which are used to compress and move natural gas along an interstate natural gas pipeline, are variable load.

Transco has suggested for the Board's consideration alternative language in its detailed written comments, including the use of averaging to achieve equivalent emission reductions.



**One Page Summary of Major Comments by PP&L Inc.**  
**on**  
**25 PA. CODE CHS 123 and 145**  
**Interstate Ozone Transport Reduction**  
**Proposed Rulemaking of March 6, 1999 25 Pa. Bulletin 1319**

1. **Pennsylvania's Rulemaking Should Be Structured to Take into Account any Subsequent Changes to the SIP Call to Avoid Placing Pennsylvania at Competitive Disadvantage with Respect to Other States.**  
Pennsylvania must ensure that any additional NOx reductions it requires be consistent with those required by the other 22 states in the EPA SIP call. Failing to do so could put Pennsylvania at a competitive disadvantage and could be environmentally counterproductive as generation could shift to the lower cost, higher-emitting states. Pennsylvania's rulemaking should, therefore, be structured to take these contingencies into account. Specific language to structure the Pennsylvania rulemaking to be consistent with future developments is included in PP&L Inc.'s comments.
2. **All allowances banked under the NOx Allowance Requirements in Section 123(a)(3) should be transitioned for use as banked allowances under the proposed rule.**  
Limiting the allowances that can be transitioned introduces uncertainty in the value of allowances banked under Section 123(a)(3), thereby discouraging early reductions. This provides no benefit to the environment.
3. **The early reduction credit provision is unnecessary and should be deleted.**  
This provision is unnecessary and confusing, as any reductions prior to 2003 will free up allowances that can be banked.
4. **The allowance allocation approach included in the EPA model rule is an acceptable alternative to the allocation approach in the proposed rule.**  
The EPA model rule allocation is an acceptable alternative to address concerns some commenters have expressed with the proposed allocation approach. However, PP&L believes that the proposed allocation approach is preferable to the EPA approach because the proposed approach is more equitable.
5. **The rule should apply only to electric generation units of 25 megawatts or more.**  
Pennsylvania's program should be consistent with the federal program to avoid placing Pennsylvania generators at a competitive disadvantage with respect those in other states.
6. **Diesel generators operating less than 208 hours during the ozone season should be exempt from the requirements of Subchapter B.**  
Without an adequate exemption, extremely costly emission control technology could be required on units with negligible cumulative NOx emissions.
7. **Emission Monitoring and Reporting Requirements to Implement the Program Should be Consistent with the Requirements to Implement the Ozone Transport Commission Model Rule.**  
The requirements EPA intends to use for implementing the trading program for non-Part 75 sources are more stringent than necessary. This will result in over-reporting and shrinkage in the number of allowances available to everyone.

**Summary of Comments of  
ZINC CORPORATION OF AMERICA  
on the  
Environmental Quality Board's Proposed Rule:  
25 Pa. Code Chapters 123 and 145  
Interstate Ozone Transport Reduction  
29 Pa. Bull. 1319 (March 6, 1999)**

Zinc Corporation of America ("ZCA") operates zinc manufacturing facilities in Monaca, Pennsylvania. ZCA's affected units under this proposed rule are two 600 mmBTU/hr boilers, each of which serves a generator with a nameplate capacity of 60 MW. The boilers principally are coal-fired, with a small amount of natural gas used for start up and to supplement the coal on occasions. The electricity is generated for the purpose of providing power to ZCA's zinc manufacturing equipment. ZCA submits the following comments:

- The EQB's classification of industrial electric generating units that produce electricity primarily for on-site industrial use as "electric generating units" or "EGUs" under the proposed rule is inconsistent with EPA's classification methodology, EPA's cost-effectiveness determination, and Pennsylvania's state trading program budgets in the NOx SIP Call. Like EPA, the EQB should classify industrial electric generating units as "non-EGUs" under the OTR trading program.
- The OTR Rule should include an inventory of affected units and initial allowance allocations to these units. Given the fact that the data necessary to calculate such initial allowances already is in the possession of the Department of Environmental Protection, there is no reason not to include the initial allowance allocations in the proposed rule.
- The OTR Rule's method for calculating initial allowance allocations for non-EGUs and yearly allowance allocations for all units starting in 2006 on the basis of the units' heat input in a single year is unfair and unworkable. Such a method renders operators too vulnerable to fluctuations in economic conditions or unexpected outages. ZCA recommends that the EQB calculate allowances for all units on the basis of an averaging methodology similar to the method used for calculating EGU initial allowances. For example, starting in 2006, yearly allowances should be allocated based on the average of the two highest amounts of the unit's heat input in the fifth, fourth, and third preceding years, rather than a single year as currently proposed.
- The NOx allowance transfer deadline should be moved to December 31 of each year to maintain consistency with the existing NOx trading program in Pennsylvania.
- ZCA supports the EQB's proposal to use the supplemental compliance pool primarily to allow the use of banked allowances from the existing program. ZCA recommends that the EQB allow the use of banked allowances created in any SIP Call state and sold to a company located in Pennsylvania.

**INTERNATIONAL PAPER COMPANY  
SUMMARY OF WRITTEN COMMENTS  
OTR REGULATIONS**

1. The Department should adopt EPA's 25 MW cutoff and sells electricity requirement for Electric-Generating Units (EGUs).
  - a. The 15 MW cutoff in the proposed OTR Regulations is much broader in scope than the 15 MW cutoff in the NO<sub>x</sub> Allowance Regulations and goes well beyond what is required or justified by EPA's SIP Call.
  - b. The Department has no technical basis to regulate units that serve generators smaller than 25 MW.
  - c. The Department has no technical basis to regulate non-EGUs as EGUs by failing to include the "sells electricity" requirement relied upon by EPA in determining Pennsylvania's budget.
  - d. Due to stricter applicability standards adopted by the Department in the OTR Regulations, the Erie Mill will have three additional boilers regulated, none of which has a rated design capacity that exceeds 250 MMBtu/hr, none of which alone can even generate 15 MW of power, and none of which are regulated by the existing NO<sub>x</sub> Allowance Regulations.
  - e. The cost to the Erie Mill to comply with the proposed 15 MW cutoff in the Pennsylvania OTR Regulations far exceeds the \$2,000 per ton of ozone season NO<sub>x</sub> reductions identified by EPA as highly cost effective.
  - f. The Department's adoption of stricter applicability standards contravenes the Pennsylvania Air Pollution Control Act, the Governor's Executive Order 1996-1 and the Regulatory Review Act.
  - g. International Paper recommends that Pennsylvania adopt the language used by EPA in its Final 126 Petition Rulemaking.
  - h. Alternatively, International Paper recommends the following language:

A unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than or equal to 25 MW, and which produces electricity for sale under a firm contract to the electric grid.
2. The Department should include EPA's exemption for units willing to accept a 25-ton ozone season emission limit.
3. The Department should adopt EPA's deadline for submission of NO<sub>x</sub> Budget Permits.
4. The Department should apply the monitoring requirements of the OTR Regulations in a manner consistent with the NO<sub>x</sub> Allowance Regulations.



**PECO Energy Company Summary of Comments for the EQB Regarding  
Its Proposed "Interstate Ozone Transport Reduction" Regulation at 29 Pa.B. 1319**

- PECO Energy is generally supportive of the proposed regulation, but does request some modifications to its implementation details as outlined below. Please see our full written comments for complete details on any particular issue.
- **Set Applicability Level at 25MW, Not 15MW.** With regard to §145.4, DEP's Air Quality Technical Advisory Committee (AQTAC) voted during its April 23, 1999 meeting to recommend that DEP remain consistent with the federal program and set the applicability level at 25 megawatts. We support AQTAC's recommendation on this issue.
- **Determining Allocations: Use Multiple Year Averages & Allocate at .15.** With regard to §145.42, PECO Energy supports the use of a multiple year baseline average to calculate emission allocations since averages reduce the impact of unusual operating circumstances that may exist in any given single year. PECO Energy supports the proposed rule's method of basing each EGU unit's 2003-2005 allocation on the average of its two highest heat input years between 1995 and 1997. We ask that this same method of using a two out of three year average also be used for control periods subsequent to 2005, rather than the currently proposed single year approach. We support deletion of the conditional language "or allowable emission level" at §145.42(b)(1) to support a level allocation methodology.
- **Longer Allocation Periods Are Better.** With regard to §145.41, we believe that allocations should be made in a minimum of three year blocks to support long-term planning and lower compliance costs.
- **Allocate Compliance Supplement Pool on Pro Rata Basis.** With regard to §145.55, PECO Energy requests that the compliance supplement pool (13,716 tons) be divided among existing Pennsylvania generators on a pro rata basis based on each unit's share of the 1995-1997 baseline used to calculate initial allocations.
- **Chapter 123 Monitoring Provisions Should be Allowed Under New Program.** Electric generators wishing to use the current Chapter 123 monitoring provisions should be allowed to do so. This issue is currently being reviewed at the AQTAC.
- **Provide Appropriate Emergency Diesel Generator Exemption.** With regard to Subchapter B, we strongly request that low utilization diesel generators be provided with an exemption from the program based simply on an operating hour threshold and that the department not try to define the exact permissible operating purpose for the diesel generator in its exemption language. We suggest the following as a modification of §145.101(d): *"(d) A diesel generator which has a permit limitation of a maximum cumulative operation of 208 hours per control period is exempt from the requirements of this subchapter."*

PECO's proposed definition will provide the desired environmental protection (e.g. the 208 hour operations cap) while at the same time avoiding the need to prescriptively define (as the current language attempts to do) the exact purpose under which a diesel generator can only be used and still qualify for the exemption. For example, the current proposal does not seem to allow for periodic availability testing of diesel generators. Without an appropriate exemption for low utilization diesel generators, extremely costly control technologies would have to be installed on diesel generators that, in electric utility applications, are typically 1 to 4 megawatts in size, operate at less than a 5% capacity factor, and produce no more than one or two tons of NOx emissions per ozone season. From an economic and environmental perspective, diesel generator emission controls would be a very inefficient use of limited capital dollars.

May 10, 1999

(submitted via e-mail)

Mr. James Seif  
Chairperson, Environmental Quality Board  
Re: Summary of Comments on the Draft Rule for Nitrogen Oxides Trading Program

Dear Chairperson Seif:

Trigen Energy Corporation (Trigen) is pleased to provide this one-page summary of our detailed comments on the proposed NOx allowance allocation and trading regulations. Trigen has facilities in Philadelphia and is developing new projects in the Commonwealth of Pennsylvania. Trigen believes that the Environmental Quality Board (Board) has a rare opportunity to establish a NOx trading program that will encourage *efficiency* and thus reduce NOx emissions. Trigen outlines three recommendations for reworking the proposed NOx Budget Trading Program.

**1. Adoption of Energy Efficiency And Renewable Energy Set-Aside Provisions**

The proposed rule does not set aside NOx allowances for energy efficiency projects. Trigen believes that the Board is sending the wrong message to the general public if energy efficiency projects are not rewarded. This approach will provide an incentive to energy producers to pursue technologies which improve efficiency and, thereby, reduce NOx emissions. If efficient technologies are not encouraged, this rulemaking will have an adverse effect on the Commonwealth by perpetuating obsolete, high emission energy generation. Currently, many large stationary NOx sources utilize wasteful, outdated technologies that result in at best, perhaps 33% of heat input being converted into useful energy. Electric-only power technologies that convert upwards of 60% of heat input into useful energy are being installed around the country. Combined heat and power production (or, cogeneration) squeezes as much as 90% of useful energy out of input fuel. In fact, the U.S. Dept. of Energy issued a challenge to double the U.S. Combined Heat and Power (CHP) capacity by 2010. U.S. EPA encourages States to set-aside 5-15% of the total NOx trading budget to reward energy efficiency and renewable energy projects. Both New York and Maryland have set aside 3% of their total NOx trading budgets for energy efficiency projects. Trigen encourages the Board to adopt EPA's recommendations and set-aside at least 5% to 10% for energy efficiency and renewable energy projects.

**2. Allocation of Allowances Based on 0.15 lb/MMBtu**

EPA's NOx model trading rule allocates allowances to all sources based on a rate of 0.15 lb/MMBtu. The Board proposed to allocate NOx allowances to budget units based on the lower of either 0.15 lb/MMBtu or the unit's allowable emission rate. Identical treatment of all sources is essential for an effective cap and trade program and allows market forces (not command and control) to *efficiently* allocate allowances. The proposed rulemaking will result in newer, more efficient sources subsidizing operations and the finance of emission controls undertaken by less efficient, existing sources. Newer, more efficient facilities can use less fuel to produce the same amount of energy output. Therefore, an input based approach, in and of itself, is biased against newer, efficient facilities. These newer facilities will not only receive fewer allocations simply for burning less fuel, but also for maintaining lower allowable emissions rates. For instance, Trigen's Grays Ferry operation uses state-of-the-art NOx control technology. Trigen has already invested significant capital to achieve the lowest NOx emissions in the industry and ought to be rewarded, not penalized. Grays Ferry, and other highly efficient operations, should receive allowances at a fixed rate of 0.15 lb/MMBtu, and on par with all other facilities, regardless of allowable emissions. The argument is a simple one, and is based on intuitive economics: The more the initial allocation diverges from the most cost-effective allocation, the greater potential for inefficient operations to exercise power over the market. As such, an older, inefficient source can reduce its NOx emissions much more inexpensively than a newer, efficient source, and can, thereby, gain an unfair advantage by accruing additional allowances to use or sell. Utilizing the same rate to allocate allowances for all sources is the only acceptable and equitable method for distributing allowances.

**3. Prepare For Future Allocations Based On An Output-Based Standard**

Trigen believes that NOx allowance allocations should be based on total useful energy output rather than the amount of fuel burned. Less efficient units should not receive more NOx allowances simply because they burn more fuel. Massachusetts developed an output-based allowance allocation system and EPA is now promoting output based standards. Trigen encourages the Board to to adopt an output-based standard following the initial allocation period and to maintain flexibility in its current rulemaking to allow for an inevitable move toward an output-based approach.

Sincerely,  
Trigen Energy Corporation, c/o Jim Qin, PhD, P.E., Manager, EHS Programs



**SUMMARY OF COMMENTS OF  
THE COALITION FOR GAS-BASED ENVIRONMENTAL SOLUTIONS  
ON CHANGES TO 25 PA CODE CHAPTERS 123 AND 145  
INTERSTATE OZONE TRANSPORT REDUCTION**

The Coalition for Gas Based Environmental Solutions is an organization of natural gas producers, suppliers and distributors that advocates the recognition of the environmental and efficiency benefits of gas and gas technology. The Coalition is pleased to offer these comments on Pennsylvania's SIP.

The State specifically requested comments on its decision diverge from the EPA Model Rule and allocate allowances to new sources at a lesser rate than allocations to existing sources. We have heard two proposed justifications for this change:

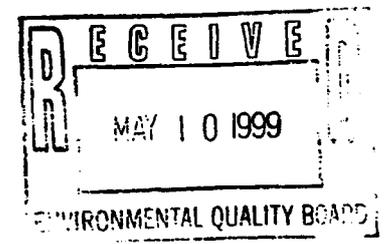
- Cleaner sources do not "need" more allowances because they are already cleaner.
- Sources should not receive allowances at a rate higher than they are allowed to emit.

The Coalition finds these arguments to be inappropriate and unconvincing.

It is true that some newer sources have emissions rates well below the nominal 0.15 lb/MMBtu allocation rate. However, these sources are clean because they have already applied the control technologies that the older sources are just now being required to consider. The marginal cost of control for new sources is often \$10,000 per ton NO<sub>x</sub> reduced, much higher than the \$2,000 to \$4,000 per ton NO<sub>x</sub> for SIP call controls at existing sources. Having paid this higher cost, these cleaner sources should not be penalized by receiving lower allocations in the trading program.

We equally reject the argument that there is no point in allocating to sources at a rate higher than their permitted level. The allocation/trading system is not the means of compliance in this program. The cap ensures compliance and guarantees the environmental benefits. Allocations are a distribution of the wealth created by the program and the trading system is supposed to allow market economics to efficiently allocate the costs among the various affected sources. If the state tries to figure how many allowances each source "needs", it is defeating the purpose of the market-based approach and backsliding to a command and control system where it tries to determine what each source "should" achieve. The program should treat all sources equally by allocating 1.5 lb/MWh to all sources. The trading program will determine where and how the allowances can most efficiently and economically be used. This is the structure of the EPA model rule and is the only way that the trading program will work properly.

We urge you to keep your SIP consistent with the EPA Model Rule and treat all sources in the state equitably and consistently.



**COMMENTS TO THE EQB  
ON THE PROPOSED RULEMAKING FOR  
CHANGES TO THE STATE IMPLEMENTATION PLAN  
TO CONTROL NITROGEN OXIDE EMISSIONS**

**Pennsylvania Bulletin 29 (10): 1319-1349, March 6, 1999**

**By Nancy F. Parks**

**Summary of Comments**

- Any allowances banked within the 110 SIP call program should be retired by DEP/BAQ at the time of transition (May 1, 2003) to this new NO<sub>x</sub> reduction program under the 110 SIP call, controlled by Chapter 145.
- Banked allowances should be from Pennsylvania and from upwind sources.
- The Sierra Club supports regulatory language that will enhance the allocation to cleaner, less polluting sources and encourages the use of existing sites as long as there is no waiver from existing pollution clean-up and reduction requirements.
- Any trading program under the NO<sub>x</sub> 110 SIP call should involve a surplus and not a required emission reduction, and be a measurable, verifiable and enforceable program. This program should be enforced as part of the Title V permit program, and no general permits should be permitted. All participating sources should have CEM's.
- Include up to 15% of the total NO<sub>x</sub> budgeted allowances to be allocated to an energy set-aside program.
- For a viable trading program, CEM's should be required of all sources, there can be no inter-pollutant trading, and inter-state trades must ensure that there is no double counting.
- Diesel generators that are used during peak generation period should not be exempted from regulatory requirements and should have hours of operation limited only if they have CEM's to track compliance.
- No source should be part of the trading program if it is not monitored. All monitoring requirements should be part of the Title V permit and therefore will be ultimately approved and enforced by EPA. The Sierra Club can not support the recommendation to DEP that it consult with OTC states and actually advocate for a less stringent program than EPA's proposed program.
- The Sierra Club supports the automatically applied penalty under §145.54 (d)(1) for an event where emissions exceed the allowances allocated to an applicable pollution source. It should be noted that the Clean Air Act has specific penalties that should be imposed for each day of the ozone season control period that a pollution source exceeds its known allocation.
- The Sierra Club supports a change to the regulatory language of section § 145.55(d)(3)(i) which would delete the phrase, "*... unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.*"
- The Sierra Club supports section § 145.54(d)(3)(ii) that defines each ton of excess emissions, and in fact, any fraction thereof, as a separate violation.
- The Sierra Club supports the progressive flow control concepts of this section § 145.55.
- § 145.55 (c)(10) Compliance Supplement Pool: This pool of allowances is distributed over and above the budget cap. Because this pool of allowances essentially "busts the cap", we do not support its distribution to affected sources, and we believe that these allowances should be retired. There should be no carryover from the NO<sub>x</sub>/MOU trading program to the 110 SIP call trading program.

**GENERAL ELECTRIC COMPANY  
SUMMARY OF WRITTEN COMMENTS  
OTR REGULATIONS**

1. The Department should include EPA's exemption for units willing to accept a 25-ton ozone season NO<sub>x</sub> emission limit.
  - a. The GE Erie facility has one unit with a rated design capacity in excess of 250 MMBtu/hr to which the proposed OTR Regulations apply.
  - b. The GE Erie facility affected unit is under a RACT permit restriction which prevents GE Erie from operating the unit during the ozone season; thus, during the ozone season, the affected unit will have zero emissions.
  - c. Despite having no NO<sub>x</sub> emissions during the ozone season, GE Erie would be required to install very costly monitoring equipment on its affected unit under the proposed OTR Regulations.
  - d. The GE Erie facility needs Pennsylvania to adopt EPA's exemption to enable it to avoid significant unnecessary monitoring costs.
2. The Department should determine the applicability of the OTR Regulations to Internal Combustion Engines (ICEs) based upon the actual emissions of the units, not horsepower ratings.
  - a. EPA included in its budget calculations for ICEs only those ICEs whose actual 1995 NO<sub>x</sub> emissions exceeded one ton per day.
  - b. Pennsylvania's use of horsepower cutoffs which are equivalent to a unit's potential to emit of one ton per day of NO<sub>x</sub> results in a significant number of ICEs regulated by Pennsylvania which were not included in EPA's SIP Call budget.
  - c. Pennsylvania's horsepower cutoffs ignore the recommendations of OTAG that only ICEs with horsepower ratings of 8,000 or greater be subject to regulation.
  - d. Numerous other states, including New York, Massachusetts, Delaware, Wisconsin, Connecticut, Kentucky, Missouri, Tennessee, Michigan and West Virginia have either not regulated ICEs or have adopted standards that more closely resemble the actual one-ton-per-day standard used by EPA to determine the SIP Call Budget for ICEs.
3. The Department should adopt the exemptions for ICEs provided by EPA in its FIP at Section 98.41.
4. The Department should adopt EPA's 25 MW cutoff and sells electricity requirement for electric-generating units.

**Comments by Columbia Gas Transmission Corporation  
Related to Proposed Pennsylvania Rulemaking  
To Reduce Regional Transport of Ozone**

**Implementation Criteria in Proposed § 145.101(a)**

Based on the preamble, the objective of the Federal Implementation Plan published in the Federal Register on October 21, 1998 is to control NOx emissions from large non-electric generating units, which are defined as units having NOx emissions greater than 1 ton per day (tpd). For IC engines, EPA used an "average" NOx emission factor of ~16 grams per horsepower-hour (g/hp-hr) based on data in its 1993 Alternate Control Techniques (ACT) document for IC engines (EPA-453/R-93-032). Based on this average emission factor, EPA concluded that 1-tpd equates to an engine rating of 2400 horsepower (hp) for lean burn IC engines and set the applicability level at 2400 hp (rather than 1-tpd). In reality, the NOx emission factors for IC engines varies widely. Columbia operates a number of engines that have emission factors of 3 g/hp-hr or less (one-fifth of EPA's average value). This is especially the case in Pennsylvania where engines that would exceed either the proposed 2400 hp or the 1-tpd threshold have already installed Reasonably Available Control Technology (RACT). Columbia has installed RACT on all IC engines of this size in Pennsylvania and they are currently permitted and operating at emission rates of 3 g/hp-hr or less.

Furthermore, many engines are operated by the gas transmission industry to meet seasonal gas demands and do not operate 24 hours per day. A review of actual operating data for Columbia's IC engines located in Pennsylvania indicated that these units operated on an average of 37 percent of the potential hours during the 1997 and 1998 ozone season.

Because of this wide variability in emission factors and operating hours, Columbia recommends using an emission cutoff of 1-tpd of actual NOx emissions to determine applicability rather than the engine hp rating. Data on engine-specific emission rates and seasonal operating rates are readily available from Title V applications, annual emission inventories and other publicly available sources. Use of hp cutoff will add additional requirements to well-controlled engines that already have installed low emission controls to achieve less than 3 g/hp-hr. As a result, only small emission reductions will be achieved from such engines at a significantly higher cost than the \$2,000/ton cost cited in the preamble of the proposed EPA SIP Call.

**Emission Control Standard Requirements § 145.103(1)(i)**

Columbia's experience with RACT installations in Pennsylvania resulted in IC engines achieving NOx emission rates of 3 g/hp-hr in most cases and no less than 2 g/hp-hr for any IC engine. The requirement to achieve a NOx emission rate of 125 ppmv would result in an emission rate of 1.6 to 1.7 g/hp-hr. Currently, there is no viable emission control technology available to retrofit older IC engines that consistently achieves this emission rate. A recent study conducted by the Gas Research Institute (GRI) showed that the gas transmission industry's experience in installing retrofit emission control systems varied from 2 to 7 g/hp-hr with an overall average of 4 g/hp-hr. The EPA ACT document states a range of 1.5 to 3.0 g/hp-hr. However, this study included new engines as well as retrofit. The existing population of IC engines used in gas transmission consists of a wide range of makes, models and vintages. To require a specific emission rate for all potential retrofit IC engines for this population is inappropriate. Columbia recommends that the specific emission rate be set at no more than 4 g/hp-hr, with a provision that allows a high emission rate where the owner/operator can demonstrate that the cost of emission controls exceeds \$2,000/ton.

Columbia believes that incorporating these recommendations will provide a cost-effective and reliable method of meeting the NOx emission reduction budget. For example, requiring an existing 2400-hp lean-burn engine that already has a 3 g/hp-hr emission factor to achieve the proposed 125 ppm emission concentration (which an IC engine is unlikely to consistently achieve) will result in nearly a five-fold increase in cost per ton of NOx removed compared to the average unit described in the ACT document. Depending on the actual ozone-season operating hours, the cost effectiveness values could be even higher.

May 7, 1999  
Environmental Quality Board

15<sup>th</sup> Floor  
Rachel Carson State Office Building  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Re: Proposed Interstate Ozone Transportation Reduction

Dear Environmental Quality Board:

On behalf of the American Portland Cement Alliance (APCA) and the Pennsylvania Cement Industry NOx Workgroup, we would like to thank the Environmental Quality Board for the opportunity to comment on the proposed rulemaking outlined in the draft of Chapter 145. Interstate Pollution Transport Reduction. The APCA - Pennsylvania Cement Industry NOx Workgroup is comprised of all cement manufacturers in Pennsylvania, we are:

Allentown Cement Company  
Essroc Cement Corp.  
Hercules Cement Company  
Keystone Cement Company

Lafarge Corporation  
Lehigh Portland Cement Company  
R C Cement Company  
Southdown, Incorporated

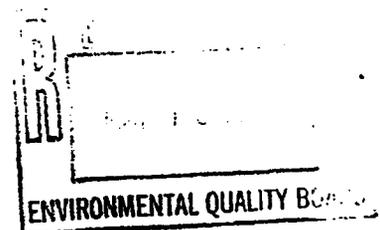
Our goal is to work with the Pennsylvania Department of Environmental Protection (PADEP) to develop regulations that meet State and Federal agency criteria while concurrently maintaining a competitive economic position for cement manufacturers operating within the Commonwealth of Pennsylvania. At this juncture, we have successfully met with the EPA and DEP to discuss our issues with the proposed regulations. From these discussions, we have prepared comments and proposed regulatory language addressing the Proposed Interstate Ozone Transportation Reduction regulations. The comments are summarized below:

- The proposed standards for portland cement kilns are more stringent than the Federal requirements and do not provide sufficient implementation flexibility. The Proposed rule should allow for NOx reduction technologies and controls.
- The emission rate based limits proposed at §145.143 should account for industry variability and should not impose unattainable emission reductions. For facilities to use alternate control technologies, the proposed emission based limits for portland cement kilns should only be used for comparative purposes when approving alternative control techniques.
- The terms Low-NOx Burner and Mid-Kiln Firing System should be clearly defined.
- Flexibility and economic consideration should be taken into account for installation of alternative NOx-reduction technologies or controls.
- Compliance implementation and documentation for installed NOx reduction technologies or controls should be clear.
- Compliance demonstration should be based upon an average rate expressed as pounds of NOx per ton of clinker produced during the entire control season for those facilities wishing to comply with a PADEP approved emission rate based limit, or choosing to comply with an alternative reduction strategy.
- Exceptions during startup, shutdown, malfunction, or scheduled maintenance activities should be allowed.
- Portland cement manufacturing facilities should be able to "opt-in" to the NOx budget trading program.
- NOx emission reduction credits should be transferable to and from other states.

We request the above serve as the one page summary of comments to be considered by the Board to be provided to each Board member in their agenda packet.

We appreciate the opportunity for our concerns and comments to be given consideration in this matter. Please contact me if you have any questions or would like to discuss these matters further.

Sincerely,  
Thomas Powers, for The Pennsylvania Cement Industry NOx Workgroup





Pennsylvania Department of Environmental Protection

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**Rachel Carson State Office Building**  
**P.O. Box 2063**  
**Harrisburg, PA 17105-2063**  
August 3, 2000

**The Secretary**

**717-787-2814**

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harristown II  
Harrisburg, PA 17101

RE: Resubmission of Final Rulemaking – Interstate Ozone Transport Reduction Requirements (#7-345)

Dear Bob:

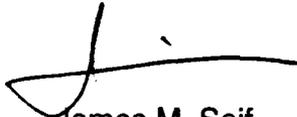
Pursuant to Section 5.1(a) of the Regulatory Review Act, enclosed is a resubmission of a final-form regulation for review by the Commission. This rulemaking was approved by the Environmental Quality Board (EQB) for final rulemaking on July 18, 2000.

This final-form rulemaking was originally submitted for Commission review on July 25, 2000. However, due to an omission of four pages in the original submittal, the rulemaking is hereby resubmitted in its entirety. The rulemaking continues to be scheduled for the August 24 Commission meeting.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this final-form regulation. Section 5.1(e) of the Act provides that the Commission shall, within ten days after the expiration of the committee review period, approve or disapprove the final-form regulation.

For additional information, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,



James M. Seif  
Secretary

Enclosure



TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

I.D. NUMBER: 7-345 RECEIVED  
SUBJECT: Interstate Ozone Transport Reduction Requirements 2000 AUG -3 PM 4: 06  
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION INDEPENDENT REGULATORY REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

X Final Regulation (Resubmission)

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions                      b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/3		HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8.3		SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/3		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

July 25, 2000