

Regulatory Analysis Form		RECEIVED This space for use by IRRC 99 FEB 17 PM 12: 19 INDEPENDENT AGENCY REVIEW COMMISSION <i>Mizner</i> 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 checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	<input type="checkbox"/> 120-Day Emergency Certification <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. <p>The proposed regulations are intended to protect the public health by reducing atmospheric ozone. Subchapters A, B, and C are 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 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 22 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 annual ozone season allowable level of emissions from approximately 93,000 tons to 58,000 tons. Subchapter B specifies emission monitoring and reporting procedures and sets emission standards for large stationary internal combustion engines, and Subchapter C specifies emission control techniques for cement kilns.</p>		
(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. EPA is taking two actions: One required by law as a result of Clean Air Act (CAA) Section 126 petitions filed by states, including Pennsylvania; and the other as a result of a CAA "SIP Call" finding of significant contribution. Both actions require remedial measures to mitigate ozone transport between states. EPA has combined the actions in such a way that separate measures are not required to comply with both actions. As required by the CAA, it is anticipated that the 126 action will result in EPA establishing emission limits for individual sources named in the petitions. Under the SIP Call, EPA requires 22 states, including Pennsylvania, to reduce emissions and has established a model cap and trade rule to do so. Failure by the state to take appropriate action under the SIP Call will result in implementation of a Federal Implementation Plan along with sanctions in the form of 2:1 offsets for new sources after 18 months and suspension of Federal highway funding after 24 months.

EPA has established federal rules in 40 CFR Part 51, that set individual state limits for NO_x emissions during the ozone season. The limits are in the form of budgets for each major category of emissions sources; electricity generating units, non-electricity generating point sources, stationary area sources, nonroad sources, and highway vehicles. The state is required to submit plans with measures that assure the budgets will be achieved. In addition, the federal rules require submission of adopted rules by September 30, 1999, which ensure that reductions will be achieved from emissions sources for which the state is specifying control measures to achieve the budgets. These measures are required to become effective by May 1, 2003.

(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 which are caused by nitrogen oxides. 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 U.S. The Commonwealth along with several other Northeast states petitioned EPA through Section 126 of the CAA to impose similar controls on upwind state's sources. 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 NO_x emission reductions across the Eastern U.S. and which served as the basis of EPA's Section 110 regulatory action.

In addition, the Commonwealth wishes to avoid Federal Implementation Plans (FIP) or

automatic Section 126 remedy. Failure to comply with EPA's SIP Call subjects Pennsylvania to the CAA sanctions including imposition of statewide new source emission offsets at 2 to 1 suspension of 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 and other eastern states 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 37% reduction beyond levels to be attained under the existing NOx allowance rule. This would correlate to a 93 million to 1.03 billion dollar per year health cost savings in Pennsylvania.

(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 and eight hour ozone standards. Modeling analyses indicate that many areas in the Eastern U.S. will likely be able to meet the eight hour standard if the program is implemented throughout the 22 states covered by the federal rules. Since the emission controls to achieve the reductions are those which are most cost effective, the economy as a whole stands to benefit through avoidance of the need for more costly substitute control measures. The entire population of the Commonwealth, as well as the populations of northeastern states downwind from Pennsylvania, will benefit from implementation of this rule.

(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.

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 entity will suffer an adverse loss of business because the costs are not high in proportion to revenues. Competition from business outside of Pennsylvania is addressed by the fact that the emission reductions required by this rule are also required in 21 other states.

(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.)

Any new 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 or equal to 15 megawatts would be subject to the regulation. Under Subchapter B internal combustion engines meeting three different horsepower ratings (that vary in conjunction with the type of fuel used) are affected.

Subchapter B covers large, stationary, internal combustion engines, most of which are used for natural gas pipeline transmission. There are 10 cement plants that will be covered by the Subchapter C rules.

(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 largely mirror the federal rule. The federal rules incorporated the results of several public workshops, including the Ozone Transport Assessment Group, which included Pennsylvania entities. The federal rule was proposed for comment in September of 1997. The final federal rule was promulgated in October of 1998 after substantial public comment. Due to the short time available to finalize this rulemaking, the Department opened the discussion on November 19, 1998, with the Air Quality Technical Advisory Committee (AQTAC) to obtain guidance and public input. A public meeting of the AQTAC on December 17 provided the Department with the recommendations of the AQTAC as well as a forum for public discussion. There will be 3 public hearings and a 60-day public comment period to obtain input on 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 budget is approximately 93,000 tons and the new budget for these sources is 58,000 tons for a reduction of 35,000 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 53 million dollars per year. This represents less than one half of one percent of revenues for the EGU sector. This is negligible in comparison to the savings of 5 to 30% which is accruing due to deregulation of the electric industry.

The estimate for costs for the reductions from the cement plants and internal combustion (IC) engines is somewhat more complicated to determine. The NOx budget schedules a 30% reduction from cement kilns and a 90% reduction from IC engines. This level of reduction is from pre-controlled levels. Because of previous RACT rules some of these controls and reductions have already been accomplished.

IC engine controls meeting this requirement were installed on several engines, these units will not incur additional control costs. The remaining sources were required under the RACT program to install an intermediate level of control. It is estimated, based on Pennsylvania source examples, that these sources would incur control costs slightly less than the 2000 dollar per ton level which EPA determined to be highly cost effective for this source category. A handful of sources have no controls and costs at these sources would be approximately 500 dollars per ton. The reason for the difference in per ton costs is that the uncontrolled sources have more tons to reduce over which to spread the cost. The *total* control costs for the completely uncontrolled sources is about double that of the controlled sources. Sources which previously invested in RACT controls will experience lower control expenses.

Cement plants were also required to control emission under the RACT rules. An analysis of their emission levels shows that they should be able to meet the new emission limits through fine tuning of existing control measures at little or not additional cost.

In addition there are monitoring costs. The affected sources (other than IC engines and cement plants which have less stringent monitoring requirements under this rule) 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. EPA estimated that for the NO_x trading program affected sources (Subchapter A) without monitoring equipment in place, costs would be 150 to 400 dollars per ton removed. Costs will be less for non-trading program sources (Subchapters B and C) since the proposed requirements do not include mass flow monitoring. Most of the Subchapters B and C sources already have adequate monitoring required under other rules.

The worst case cost estimate was \$53 million per year against revenues of over 12 billion dollars per year for the electric utility industry alone. This represents 0.5% of present revenues. The aggregate post RACT cost for Subchapters B and C sources may range up to 12 million dollars per year based on several factors. It is estimated that cement plants with 1995 emissions over 8000 tons will make a 2400 ton reduction, at 2000 dollars per ton, of 5 million dollars. IC engine estimates are less certain. The average annualized cost for a representative unit is \$62,000 to \$124,000 for an average of \$93,000. With approximately 50 affected units, the total cost equals roughly 5 million dollars. Any additional required monitoring for both cement and IC engines taken together may add about 2 million more to the total costs (based on a 7500 ton reduction at average 250 dollars per ton monitoring cost).

(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. It is expected that there will be no cost increases beyond those incurred due to the existing NO_x 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.

	Current FY	FY+1	FY+2	FY+3	FY+4	FY+5
SAVINGS:	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).					

Regulated Community	Some portion of health and welfare costs
Local Government	Some portion of health and welfare costs
State Government	Some portion of health and welfare costs
General Public	A significant portion of the health care costs and some welfare costs

Total Savings 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 37% reduction with correlating benefits from 93 million to 1.03 billion dollars per year.

COSTS:

Regulated Community Total costs for the regulated community is estimated to be approximately 65 million dollars per year.

Local Government	None
State Government	None
General Public	Nominal cost increases will be passed to state local and general public

Total Costs

REVENUE LOSSES:

Regulated Community	Electric generators will internalize cost increases, revenue losses should not occur since all states must comply with the same requirement and potential competitive losses are minimized.
Local Government	None anticipated
State Government	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.

The applicability threshold for electric generators is slightly lower than that which is contained in the federal rule; however the threshold is currently in the state implementation plan in the existing Allowance rule. It remains necessary to limit emissions from these sources in order to attain and maintain the National Ambient Air Quality Standards.

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

EPA requires 22 states and the District of Columbia to achieve emission reductions under the SIP Call. It is anticipated that many states will use a similar cap and trade approach because it achieves reductions through a least cost market based approach. No competitive disadvantage is anticipated.

(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.

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

Three public hearings are required to be scheduled.

(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. In addition, this regulation contains reporting requirements consistent with the requirements in Chapter 123.

(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. Permit applications are required 6 months after adoption and 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.

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.

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Copy below is hereby approved as to form and legality. Attorney General

Cristina S. Caputo

(DEPUTY ATTORNEY GENERAL)

FEB 16 1999.

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-345

DATE OF ADOPTION:

BY:

James M. Seif

TITLE:

JAMES M. SEIF, CHAIRMAN

(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agency

BY: *Ornaldi*

2/16/99

DATE OF APPROVAL

(Deputy General Counsel)
~~(Chief Counsel, Independent Agency)~~
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF
PROPOSED RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Interstate Ozone Transport Reduction

25 Pa. Code Chapter 145

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

Preamble

The Environmental Quality Board (Board) proposes amendments to 25 Pa. Code Chapter 123 (relating to standards for contaminants) and proposes to adopt a new 25 Pa. Code Chapter 145 (relating to interstate ozone transport reduction) as set forth in Annex A.

The proposed regulations establish a program to limit the emission of nitrogen oxides (NO_x) from fossil fired combustion units with rated heat input capacity of 250 MMBtu per hour or more and electric generating facilities of 15 megawatts or greater. This program which would or scheduled to begin in 2003 would replace the existing NO_x allowance requirements contained at 25 Pa. Code Chapter 123. The proposed regulations also establish emission limitations for NO_x emissions from stationary reciprocating internal combustion engines and cement manufacturing operations.

This proposal was adopted by the Board at its meeting of February 16, 1999.

A. Effective Date

These amendments 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, 12th 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, 9th 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 proposed 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. Section 184 of the Clean Air Act (42 U.S.C.A. §7511c), 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_x 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.A. §7511a) 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_x 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 NO_x 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 NO_x emissions. This regional approach resulted in a model rule applicable to "NO_x affected sources". NO_x 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 NO_x 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 NO_x affected sources, allocates allowances (the limited authorization to emit one ton of NO_x 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 NO_x emission reductions for the years 1999 through 2002.

As additional air quality modeling and analysis was developed, it became apparent that reductions of NO_x 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. The modeling demonstrated that large fossil-fired combustion units in 22 of the 37 states significantly contributed to ozone nonattainment and will prevent attainment and maintenance of the ozone NAAQS.

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. Pennsylvania's Petition requested a finding that large fossil fired combustion units and electric generating units in mid-western and southern states significantly contributed to nonattainment of the ozone NAAQS in Pennsylvania. Pennsylvania requested that the Administrator of EPA establish emission limitations for these large NO_x 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. Final action on the petitions is planned for April of 1999.

Because EPA's analysis demonstrates that 22 states and the District of Columbia significantly contributed to nonattainment of the ozone NAAQS in other states, EPA is 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 NO_x 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 the cap and trade program for large fossil fired combustion boilers and electric

generating units greater than 25 megawatts. EPA has 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 are required, by EPA's final SIP call rule, to establish NO_x emission programs on or before September 30, 1999. If states fail to establish SIP based programs, EPA will impose a Federal Implementation Plan (FIP) under Section 110 of the Clean Air Act (42 U.S.C.A. §7410).

Pennsylvania's proposed regulations at 25 *Pa. Code* Chapter 145, are designed to meet the requirements of the NO_x SIP call. Pennsylvania used EPA's model cap and trade program rule found in 40 C.F.R. Part 96, and their proposed rule for regulating stationary reciprocating internal combustion engines and cement manufacturing proposed in 63 *Fed. Reg.* 56394, as the basis for proposed Chapter 145.

The proposed 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 proposed new Chapter 145 Interstate Ozone Transport Reduction contains three subchapters. Subchapter A §§145.1-145.90 establishes the NO_x budget trading program for fossil fired combustion boilers with a maximum design heat input greater than or equal to 250 million MMBtu per hour and electric utility generators with a rated capacity greater than or equal to 15 megawatts. Subchapter B §§145.101-145.105 establishes requirements for emissions of NO_x from stationary reciprocating internal combustion engines. Subchapter C §§145.141-145.144 establishes requirements for emissions of NO_x from cement manufacturing. Finally, the proposal modifies §123.115 and adds §123.121 to eliminate the existing NO_x allowance requirements in 2003.

Subchapter A establishes definitions for the following terms: "Account certificate of representation", "Account number", "Acid Rain emissions limitation", "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", "Emissions", "Energy Information Administration", "Excess emissions", "Fossil fuel", "Fossil fuel-fired", "General account", "Generator", "Heat input", "Life-of-the-unit, firm power contractual arrangement", "Maximum design heat input", "Maximum potential hourly heat input", "Maximum potential NO_x emission rate", "Maximum rated hourly heat input", "Monitoring system", "Most stringent State or Federal NO_x emissions

limitation", "Nameplate capacity", "Non-title V permit", "NO_x allowance", "NO_x allowance deduction or deduct NO_x allowances", "NO_x allowances held or hold NO_x allowances", "NO_x Allowance Tracking System", "NO_x Allowance Tracking System account", "NO_x allowance transfer deadline", "NO_x authorized account representative", "NO_x budget administrator", "NO_x Budget emissions limitation", "NO_x Budget opt-in permit", "NO_x Budget opt-in source", "NO_x Budget permit", "NO_x Budget source", "NO_x Budget Trading Program", "NO_x Budget unit", "Operating", "Operator", "Opt-in", "Overdraft account", "Owner", "Receive or receipt of", "Recordation, record, or recorded", "Reference method", "Serial number", "Source", "State trading program budget", "Submit or serve", "Title V operating permit", "Title V operating permit regulations", "Ton or tonnage", "Unit", "Unit load", "Unit operating day", "Unit operating hour or hour of unit operation", and "Utilization". These defined terms are used in the substantive provisions of Subchapter A.

Subchapter A implements the EPA NO_x SIP call using the framework from EPA's model rule developed and promulgated at 40 CFR Part 96. The Pennsylvania cap and trade rule identifies the facilities subject to regulation in §145.4 and describes the process for NO_x 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 NO_x 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 NO_x budget rule and the EPA acid rain requirements at 40 CFR Part 75. Chapter 145, like the existing NO_x cap and trade program in Chapter 123, will be implemented through the Department's permitting program. The permit requirements are contained at §§145.20-145.25. In general, the Department plans to integrate this trading rule into its existing permitting program.

Emission reduction credit provisions consistent with the existing requirements in Chapters 123 and 127 are proposed in §145.90.

These proposed regulations differ from the existing NO_x allowance requirements in Chapter 123 and the EPA model rule in a number of ways. First, this rule requires emission reductions greater than the reductions required by Chapter 123. Second, under the existing program in Chapter 123, individual "NO_x affected sources" are listed in Appendix E of the regulation along with the number NO_x allowances available. Chapter 145, on the other hand, establishes a formula for calculation of NO_x allowances in Section 145.42. This formula is based on an emission limitation expressed as an

emission rate times the heat input or usage of the "NO_x budget unit". The heat input number is derived from actual data submitted by the "NO_x budget source".

The proposed federal rule is also different than the proposed Chapter 145 program and the existing NO_x allowance requirements. The federal rule is applicable only to generating units of 25 megawatts or greater. Proposed Chapter 145, consistent with the existing program in Chapter 123, includes electric generating units of 15 megawatts or greater. The proposed Chapter 145 does not contain the exemption included in the federal rule allowing certain facilities to limit emissions to avoid being subject to the cap and trade program. Finally, in Section 145.42(b), proposed Chapter 145 establishes an emission rate for allowance calculation at the level contained in the EPA model program. However, Chapter 145 would reduce this emission rate if the source has a low emission rate established in a permit. These provisions provide additional assurance that Pennsylvania will meet the NO_x budget contained in the Section 110 SIP call. These provisions also provide additional protection as Pennsylvania moves toward developing requirements to meet the new 8-hour ozone standard.

Subchapter B contains definitions for the following terms: "Department", "Diesel engine", "Dual fuel engine", "Emergency standby engine", "Engine rating", "Higher heating value (HHV)", "Lean burn engine", "Maintenance operation", "Output", "Peak load", "Permitted capacity factor", "Rich-burn engine", "Stationary internal combustion engine", "Stoichiometric air/fuel ratio", and "Unit". These terms are used in the substantive provisions of Subchapter B.

Section 145.103 establishes emission rates for four categories of stationary reciprocating internal combustion engines. This subchapter also establishes compliance reporting, monitoring and recordkeeping requirements in §145.104 and 145.105.

Subchapter C contains definitions of the following terms: "Clinker", "Department", "Long dry kiln", "Long wet kiln", "Portland cement", "Portland cement kiln", "Preheater kiln", and "Preheater kiln". These terms are used in the substantive provisions of this subchapter.

Section 145.143 establishes emission limitations for four types of cement kilns. Section 145.144 establishes reporting, monitoring and recordkeeping requirements for these units.

F. 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

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. These costs are expected to be in the range of 53 million dollars per year. The analysis of the emission levels source of cement plants in Pennsylvania indicates that these facilities should be able to meet the new limitations through fine tuning of existing control devices at little additional costs. For internal combustion engines, it is estimated that these sources will incur control costs between five hundred (\$500) and two thousand dollars (\$2000) per ton which EPA has determined to be highly cost effective for this source category. Some of these sources have no controls presently; others have controls which may allow them to meet the proposed emission limitations.

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.

G. 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.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15)), the Department submitted a copy of the proposed rulemaking on February 17, 1999, to the Independent Regulatory Review Commission and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided the Commission and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed amendments, it will notify the Department within thirty (30) days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulation.

I. Public Comments and EQB Hearings

The EQB will hold three (3) public hearings for the purpose of accepting comments on the proposed amendments. The hearings will be held at 2:00 p.m. as follows:

- | | |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| April 6, 1999 | Department of Environmental Protection
Southwest Regional Office
400 Waterfront Drive
Pittsburgh, Pa. |
| April 7, 1999 | Department of Environmental Protection
Southcentral Regional Office
Susquehanna River Conference Room
909 Elmerton Avenue
Harrisburg, Pa. |
| April 8, 1999 | Department of Environmental Protection
Southeast Regional Office
Suite 6010, Lee Park
555 North Lane
Conshohocken, Pa. |

Persons wishing to present testimony at the hearings must contact Kate Coleman at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (telephone: (717) 787-4526), at least one (1) week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to ten minutes for each witness and three written copies of the oral testimony is requested to be submitted at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearings and require an auxiliary aid, service or other accommodations in order to participate should contact Kate Coleman at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-4984 (TDD Users) or (800) 654-5988 (Voice Users) to discuss how the Department may accommodate their needs.

Written Comments

In lieu of or in addition to presenting oral testimony at the hearings, interested persons may submit written comments, suggestions or objections regarding the proposed amendments to the EQB, 15th Floor, Rachel Carson State Office Building, P. O. Bo x 8477, Harrisburg, PA 17105-8477. Comments received by facsimile will not be accepted. Comments must be received by May 10, 1999 (65 days from date of publication). In additions to written comments, interested persons may also submit a summary of their comments to the EQB. This summary may not exceed one (1) page in length and must be received by May 10, 1999 (65 days from the date of publication). This summary will be provided to each member of the EQB in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

The Board is specifically requesting comments in four areas:

1. EPA's emission budget calculation and model trading rule allow NO_x allowances banked under the NO_x Allowance Requirements at 25 *Pa. Code* §123.110(a)(3) to be transitioned for use as banked allowances under this proposed rule. This is one of the authorized uses of the supplemental compliance pool established by the EPA rule. The amount of the bank is established at §145.55(c)(10). Under §145.55(c)(9), these banked allowances can only be used in 2003-2004. The Board is requesting comment on whether to allow the use of banked allowances from the existing program, as authorized by the EPA rule, or whether to use the supplemental compliance pool for other purposes. In addition, the Board requests comment on how to determine the number of banked allowances, i.e., should the bank only include allowances created in Pennsylvania, should the bank authorize the use of allowances

created in other states and sold to companies located in Pennsylvania or should some other more appropriate process be used.

2. Sections 145.42(b)(1) and (c)(1) use the lower of the EPA model rule emission limitation or any more restrictive allowance emission rate to be used to calculate allowances provided to each NO_x budget unit. This provision is more restrictive than the EPA model rule and results in less allowances being provided to units that meet lower emission limits than provided by the EPA budget calculations. This primarily affects newer units and those recently modified (including repowered sources) that have very low allowance emission levels established. The AQTAC had concerns about this approach. The Board is specifically requesting comments on whether to use the approach contained in the proposed rulemaking, the approach included in the EPA model rule or some other alternative approach.

3. The proposed rulemaking includes electric generating units of 15 MW or greater in the NO_x trading program. This is the cutoff established by the NO_x Allowance Requirements in Sections 123.101-123.120. The EPA budget calculations and model rule includes only electric generating units of 25 MW or greater as part of the trading program. The Board is requesting input on what level of electric generation is appropriate for regulation under the Pennsylvania rule.

4. Both the EPA model rule and the proposed rulemaking incorporate the trading program into the Department's existing permit program contained in Chapter 127. The Board seeks input on integrating the trading program into the existing plan approval and operating permit program so as to create as few additional administrative requirements as possible.

Electronic Comments

Comments may be submitted electronically to the EQB at RegComments@dep.state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the EQB by May 10, 1999 (65 days from date of publication).

By:

James M. Seif
Chairman

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

Chapter 123. STANDARDS FOR CONTAMINANTS

* * * * *

§ 123.115. Initial NO_x allowance NO_x allocations.

(a) The sources contained in Appendix A are subject to the requirements of §§ 123.101—123.114, 123.116—123.120 and this section. These sources are allocated NO_x allowances for the 1999—2002 NO_x allowance control periods as listed in Appendix A. [Except as provided in § 123.120 (relating to audit), if no allocation is specified for NO_x allowance control periods beyond 2002, the current allocations continue indefinitely.]

* * * * *

§ 123.121. NO_x ALLOWANCE PROGRAM TRANSITION.

(a) NO_x ALLOCATIONS FOR THE NO_x ALLOWANCE CONTROL PERIODS STARTING MAY 1, 2003 WILL BE DISTRIBUTED IN ACCORDANCE WITH THE REQUIREMENTS IN CHAPTER 145.

(b) THE EMISSION LIMITATIONS AND MONITORING REQUIREMENTS
ESTABLISHED IN SECTIONS 123.101—123.120 SHALL EXPIRE ON DECEMBER 31,
2002. IF A SOURCE HAS FAILED TO DEMONSTRATE COMPLIANCE WITH SECTION
123.111 (RELATING TO FAILURE TO MEET SOURCE COMPLIANCE REQUIREMENTS),
THE PROVISIONS OF SECTION 145.54(d) SHALL BE USED TO WITHHOLD NO_x
ALLOWANCES IN CALENDAR YEAR 2003 AND BEYOND, IF NECESSARY. IF NO NO_x
ALLOWANCES ARE PROVIDED TO THE SOURCE UNDER § 145.42, THE SOURCE
WILL BE OBLIGATED TO ACQUIRE AND RETIRE A NUMBER OF NO_x ALLOWANCES
AS SPECIFIED IN § 145.54.

* * * * *

[Editor's Note: The entirety of Chapter 145 is new and is printed in regular type to enhance readability.]

CHAPTER 145. INTERSTATE POLLUTION TRANSPORT REDUCTION

Subchapter A. NO_x Budget Trading Program.

§ 145.1. Purpose.

This subchapter establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_x Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

§ 145.2. Definitions.

The terms used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

Account certificate of representation—The completed and signed submission certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and operators of such

source or sources and of the NO_x Budget units at such source or sources with regard to matters under the NO_x Budget Trading Program.

Account number—The identification number given by the Administrator to each NO_x Allowance Tracking System account.

Acid Rain emissions limitation—A limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the CAA, 42 U.S.C. 7651-7651o.

Administrator—The Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation—The determination by the Department of the number of NO_x allowances to be initially credited to a NO_x Budget unit or an allocation set-aside.

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

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

CAA—The Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

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

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

Commence commercial operation—With regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 145.5, for a unit that is a NO_x Budget unit under § 145.4 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in § 145.5 or §§ 145.80 through 145.88 of this part, for a unit that is not a NO_x Budget unit under § 145.4 on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under § 145.4 shall be the unit's date of commencement of commercial operation.

Commence operation—To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in § 145.5, for a unit that is a NO_x Budget unit under § 145.4 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in § 145.5 or §§ 145.80 through 145.88, for a unit that is not a NO_x Budget unit under § 145.4 on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under § 145.4 shall be the unit's date of commencement of operation.

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

Compliance certification—A submission to the Department and the Administrator that is required under this subchapter to report a NO_x Budget source's or a NO_x Budget unit's compliance or noncompliance with this subchapter and that is signed by the NO_x authorized account representative in accordance with this subchapter.

Compliance account—A NO_x Allowance Tracking System account for a NO_x Budget unit under this subchapter, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x Budget emissions limitation.

Continuous emission monitoring system (CEMS)—The equipment required under this subchapter and Chapter 139 to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR Part 75, in a continuous emission monitoring system:

- (1) Flow monitor;
- (2) Nitrogen oxides pollutant concentration monitors;
- (3) Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by this subchapter;
- (4) A continuous moisture monitor when such monitoring is required by this subchapter; and
- (5) An automated data acquisition and handling system.

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

Department—The Department of Environmental Protection.

Emissions—Air contaminants exhausted from a unit or source into the atmosphere in accordance with this subchapter.

Energy Information Administration—The Energy Information Administration of the United States Department of Energy.

Excess emissions—Any tonnage of nitrogen oxides emitted by a NO_x Budget unit during a control period that exceeds the NO_x Budget emissions limitation for the unit.

Fossil fuel—Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil fuel-fired—With regard to a unit:

(1) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(2) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be “fossil fuel-fired” as of the date, during such year, on which the unit begins combusting fossil fuel.

General account—A NO_x Allowance Tracking System account, established under this subchapter, that is not a compliance account or an overdraft account.

Generator—A device that produces electricity.

Heat input—The product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time) as determined in accordance with this subchapter, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

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

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input—The ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

Maximum potential hourly heat input—An hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value must be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value must be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

Maximum potential NO_x emission rate—The emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of Appendix F of 40 CFR Part 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of Appendix A of 40 CFR Part 75, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂).

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

Monitoring system—Any monitoring system that meets the requirements of this subchapter, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

Most stringent State or Federal NO_x emissions limitation—With regard to a NO_x Budget opt-in source, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

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

Non-title V permit—A federally enforceable permit issued by the Department pursuant to Chapter 127, Subchapters A, B, and F.

NO_x allowance—An authorization by the Department under the NO_x Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

NO_x allowance deduction or deduct NO_x allowances—The permanent withdrawal of NO_x

allowances from a NO_x Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x Budget unit for a control period, determined in accordance with this subchapter, or for any other allowance surrender obligation under this subchapter.

NO_x allowances held or hold NO_x allowances—The NO_x allowances recorded in accordance with or submitted for recordation this subchapter, in a NO_x Allowance Tracking System account.

NO_x Allowance Tracking System—The system for recording allocations, deductions, and transfers of NO_x allowances under the NO_x Budget Trading Program.

NO_x Allowance Tracking System account—An account in the NO_x Allowance Tracking System for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

NO_x allowance transfer deadline—Midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x Budget emissions limitation for the control period immediately preceding such deadline.

NO_x authorized account representative—For a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x Budget units at the source, in accordance with, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with this subchapter, to transfer or otherwise dispose of NO_x allowances held in the general account.

NO_x budget administrator—The person or agency designated by the Department as the NO_x budget administrator of the NO_x Allowance Tracking System and the NO_x Emission Tracking System.

NO_x Budget emissions limitation—For a NO_x Budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for a control period under §145.54(a) and (b), adjusted by any deductions of such NO_x allowances to account for actual utilization under §145.42(e) 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_x Budget Program, or for a change in regulatory status, for a NO_x Budget opt-in source under §145.86 or §145.87.

NO_x Budget opt-in permit—A NO_x Budget permit covering a NO_x Budget opt-in source.

NO_x Budget opt-in source—A unit that has been elected to become a NO_x Budget unit under the NO_x Budget Trading Program and whose NO_x Budget opt-in permit has been issued and is in effect under this subchapter and Chapter 127.

NO_x Budget permit—The legally binding and federally enforceable written document, or portion of such document, issued by the Department, including any permit revisions, specifying the NO_x Budget Trading Program requirements applicable to a NO_x Budget source, to each NO_x Budget unit at the NO_x Budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x Budget source and each NO_x Budget unit.

NO_x Budget source—A source that includes one or more NO_x Budget units.

NO_x Budget Trading Program—A multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this subchapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

NO_x Budget unit—A unit that is subject to the NO_x Budget Trading Program emissions limitation under § 145.4 or § 145.80.

Operating—With regard to a unit under §§ 145.22(4)(ii) and 145.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_x Budget permit under § 145.83.

Operator—Any person who operates, controls, or supervises a NO_x Budget unit, a NO_x Budget source, or unit for which an application for a NO_x Budget opt-in permit under § 145.83 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Opt-in—To elect to become a NO_x Budget unit under the NO_x Budget Trading Program through a final, effective NO_x Budget permit under this subchapter.

Overdraft account—The NO_x Allowance Tracking System account established under this Subchapter for each NO_x Budget source where there are two or more NO_x Budget units.

Owner—Any of the following persons:

- (1) Any holder of any portion of the legal or equitable title in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under § 145.83 is submitted and not denied or withdrawn; or
- (2) Any holder of a leasehold interest in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under § 145.83 is submitted and not denied or withdrawn; or
- (3) Any purchaser of power from a NO_x Budget unit or from a unit for which an application for a NO_x Budget opt-in 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, owner shall not

include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x Budget unit or the unit for which an application for a NO_x Budget opt-in permit under § 145.83 is submitted and not denied or withdrawn; or

(4) With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

Receive or receipt of—When referring to the Department, Administrator or NO_x budget administrator to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Department or Administrator in the regular course of business.

Recordation, record, or recorded—With regard to NO_x allowances, the movement of NO_x allowances from one NO_x Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

Reference method—Any direct test method of sampling and analyzing for an air pollutant as specified in Appendix A of 40 CFR Part 60.

Serial number—When referring to NO_x allowances, the unique identification number assigned to each NO_x allowance, under § 145.53(c).

Source—Any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of Section 502(c) of the CAA, a “source,” including a “source” with multiple units, shall be considered a single “facility.”

State—Means one of the 48 contiguous States and the District of Columbia that adopts a NO_x Budget Trading Program pursuant to this Subchapter. The term “State” shall have its conventional meaning where such meaning is clear from the context.

State trading program budget—The total number of NO_x tons apportioned to all NO_x Budget units in a given State, in accordance with the NO_x Budget Trading Program, for use in a given control period.

Submit or serve—To send or transmit a document, information, or correspondence to the person:

- (1) In person;
- (2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. 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.

Title V operating permit regulations—The regulations that the Administrator has approved or issued as meeting the requirements of Title V of the CAA and 40 CFR Part 70 or 71.

Ton or tonnage—Any “short ton” (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_x Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with this subchapter, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

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

Unit load—The total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

- (1) The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or
- (2) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

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

Unit operating hour or hour of unit operation—Any hour (or fraction of an hour) during which a unit combusts any fuel.

Utilization—The heat input (expressed in mmBtu/time) for a unit. The unit’s total heat input for the control period in each year will be determined in accordance with 40 CFR Part 75 if the NO_x Budget unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

§ 145.3. Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.
hr-hour.

Kwh-kilowatt hour.
lb-pounds.
mmBtu-million Btu.
MWe-megawatt electrical.
ton-2000 pounds
CO₂-carbon dioxide.
NO_x-nitrogen oxides.
O₂-oxygen.

§ 145.4. Applicability.

The following units shall be NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this subchapter:

(1) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than or equal to 15 MWe ; or

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

§ 145.5. Retired unit exemption.

(a) This section applies to any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired.

(b) Requirements.

(1) Any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired shall be exempt from the NO_x Budget Trading Program, except for the provisions of this section, §§ 145.2, 145.3, 145.4, 145.7 and §§ 145.40 through 145.62.

(2) The exemption under paragraph (1) shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_x authorized account representative (authorized in accordance with this subchapter) shall submit a statement to the Department. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the Department) that the unit is permanently retired and will comply with the requirements of subsection (c).

(3) After receipt of the notice under paragraph (2), the Department will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraph (1) and subsection (c).

(c) Special provisions.

(1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the

date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with §§ 145.40 through 145.42.

(2) A unit exempt under this section shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under § 145.22 for the unit not less than 18 months prior to the date on which the unit is to first resume operation.

(3) The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_x Budget Trading Program concerning all periods for which the exemption is not in effect, even if such 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_x Budget opt-in source under §§ 145.80 through 145.88.

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

(6) Loss of exemption.

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

(A) The date on which the NO_x authorized account representative submits a NO_x Budget permit application under paragraph (2); or

(B) The date on which the NO_x authorized account representative is required under paragraph (2) to submit a NO_x Budget permit application.

(ii) For the purpose of applying monitoring requirements under §§ 145.70 through 145.76, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

§ 145.6. Standard requirements.

(a) Permit Requirements.

(1) The NO_x authorized account representative of each NO_x Budget source and each NO_x

Budget unit at the source shall:

(i) Submit to the Department a complete NO_x Budget permit application under § 145.22 in accordance with the deadlines specified in § 145.21(b);

(ii) Submit any supplemental information that the Department determines is necessary in order to review a NO_x Budget permit application and issue or deny a NO_x Budget permit.

(2) The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall have a NO_x Budget permit issued by the Department and operate the unit in compliance with such NO_x Budget permit.

(b) Monitoring requirements.

(1) The owners and operators and the NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source shall comply with the monitoring requirements of §§ 145.70 through 145.76.

(2) The emissions measurements recorded and reported in accordance with §§ 145.70 through 145.76 shall be used to determine compliance by the unit with the NO_x Budget emissions limitation under paragraph (c) of this section.

(c) Nitrogen oxides requirements.

(1) The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall hold NO_x allowances available for compliance deductions under § 145.54, as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the control period from the unit, as determined in accordance with §§ 145.70 through 145.76, plus any amount necessary to account for actual utilization under § 145.42(e) for the control period.

(2) Each ton of nitrogen oxides emitted in excess of the NO_x Budget emissions limitation shall constitute a separate violation of this subchapter and the Air Pollution Control Act.

(3) A NO_x Budget unit shall be subject to the requirements under paragraph (1) starting on May 1, 2003, or the date on which the unit commences operation, whichever is later.

(4) NO_x allowances shall be held in, deducted from, or transferred among NO_x Allowance Tracking System accounts in accordance with §§ 145.40 through 145.62 and §§ 145.80 through 145.88.

(5) A NO_x allowance shall not be deducted, in order to comply with the requirements under paragraph (1), for a control period in a year prior to the year for which the NO_x

allowance was allocated.

(6) A NO_x allowance allocated by the Department under the NO_x Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_x Budget Trading Program. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under § 145.5 and no provision of law shall be construed to limit the authority of the United States or the Department to terminate or limit such authorization.

(7) A NO_x allowance allocated by the Department under the NO_x Budget Trading Program does not constitute a property right.

(d) The owners and operators of a NO_x Budget unit that has excess emissions in any control period shall:

(1) Surrender the NO_x allowances required for deduction under § 145.54(d)(1); and

(2) Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 145.54(d)(3) or the Air Pollution Control Act.

(e) Recordkeeping and Reporting Requirements.

(1) Unless otherwise provided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Department or the Administrator.

(i) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with § 145.13, provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

(ii) All emissions monitoring information, in accordance with §§ 145.70 through 145.76. Provided to the extent that §§ 145.70 through 145.76 provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x Budget Trading Program.

(iv) Copies of all documents used to complete a NO_x Budget permit application and any other submission under the NO_x Budget Trading Program or to

demonstrate compliance with the requirements of the NO_x Budget Trading Program.

(2) The NO_x authorized account representative of a NO_x Budget source and each NO_x Budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget Trading Program, including those under §§ 145.30 and 145.31 and 145.70 through 145.88.

(f) Liability.

(1) No permit revision shall excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that the revision takes effect.

(2) Each NO_x Budget source and each NO_x Budget unit shall meet the requirements of the NO_x Budget Trading Program.

(3) Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget source (including a provision applicable to the NO_x authorized account representative of a NO_x Budget source) shall also apply to the owners and operators of such source and of the NO_x Budget units at the source.

(4) Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x budget unit) shall also apply to the owners and operators of such unit.

(g) Effect on Other Authorities. No provision of the NO_x Budget Trading Program, a NO_x Budget permit application, a NO_x Budget permit, or an exemption under § 145.5 shall be construed as exempting or excluding the owners and operators and the NO_x authorized account representative of a NO_x Budget source or NO_x Budget unit from compliance with any other provision of the regulations promulgated under the CAA or the Air Pollution Control Act.

§ 145.7. Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NO_x Budget Trading Program, falls on a weekend or a Pennsylvania or Federal holiday, the time period shall be extended to the next business day.

§ 145.10. Authorization and responsibilities of the NO_x authorized account representative.

(a) Except as provided under § 145.11, each NO_x Budget source, including all NO_x Budget units at the source, shall have one and only one NO_x authorized account representative, with regard to all matters under the NO_x Budget Trading Program concerning the source or any NO_x Budget unit at the source.

(b) The NO_x authorized account representative of the NO_x Budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x Budget units at the source.

(c) Upon receipt by the Department and the NO_x Budget Administrator of a complete account certificate of representation under § 145.13, the NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x Budget source represented and each NO_x Budget unit at the source in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the Department, the Administrator, or a court regarding the source or unit.

(d) No NO_x Budget permit shall be issued, and no NO_x Allowance Tracking System account shall be established for a NO_x Budget unit at a source, until the Department and the NO_x Budget Administrator have received a complete account certificate of representation under § 145.13 for a NO_x authorized account representative of the source and the NO_x Budget units at the source.

(e) Document submission requirements.

(1) Each submission under the NO_x Budget Trading Program shall be submitted, signed, and certified by the NO_x authorized account representative for each NO_x Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x Budget sources or NO_x Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The Department and NO_x Budget Administrator will accept or act on a submission made on behalf of owner or operators of a NO_x Budget source or a NO_x Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (1).

§ 145.11. Alternate NO_x authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(b) Upon receipt by the Department and NO_x Budget Administrator of a complete account certificate of representation under § 145.13, any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(c) Except in this section and §§ 145.10(a), 145.12, 145.13, and 145.51, whenever the term “NO_x authorized account representative” is used in this part, the term shall be construed to include the alternate NO_x authorized account representative.

§ 145.12. Changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in the owners and operators.

(a) Changing the NO_x authorized account representative. The NO_x authorized account representative may be changed at any time upon receipt by the Department and the NO_x Budget Administrator of a superseding complete account certificate of representation under § 145.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the Department and the NO_x Budget Administrator receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

(b) Changing the alternate NO_x authorized account representative. The alternate NO_x authorized account representative may be changed at any time upon receipt by the Department and the NO_x Budget Administrator of a superseding complete account certificate of representation under § 145.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the Department and the NO_x Budget Administrator receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

(c) Changes in the owners and operators.

(1) In the event a new owner or operator of a NO_x Budget source or a NO_x Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x

authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Department or the NO_x Budget Administrator, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a NO_x Budget source or a NO_x Budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

§ 145.13. Account certificate of representation.

(a) A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the NO_x Budget Administrator:

(1) Identification of the NO_x Budget source and each NO_x Budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative.

(3) A list of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source.

(4) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department, the Administrator, or a court regarding the source or unit."

(5) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(b) Unless otherwise required by the Department or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or Administrator. The Department and Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 145.14. Objections concerning the NO_x authorized account representative.

(a) Once a complete account certificate of representation under § 145.13 has been submitted and received, the Department and the NO_x Budget Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under § 145.13 is received by the Department and NO_x Budget Administrator.

(b) Except as provided in § 145.12(a) or (b), no objection or other communication submitted to the Department or Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the Department or Administrator under the NO_x Budget Trading Program.

(c) The Department and the Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

§ 145.20. General NO_x budget trading program permit requirements.

(a) Each NO_x Budget source must have a NO_x Budget permit.

(1) For NO_x Budget sources required to have a title V operating permit, the NO_x Budget portion of the title V permit shall be administered in accordance with Chapter 127, subchapter G.

(2) For NO_x Budget sources required to have a non-title V permit, the NO_x Budget portion of the non-title V permit shall be administered in accordance with Chapter 127, subchapters A, B and F.

(b) Each NO_x Budget permit shall include all applicable NO_x Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.

§ 145.21. NO_x Budget permit applications.

(a) The NO_x authorized account representative of any NO_x Budget source shall submit to the Department a complete NO_x Budget permit application under § 145.22 by the applicable deadline in paragraph (b) of this section.

(b) NO_x Budget permits:

(1) For any source, with one or more NO_x Budget units under § 145.4 that commence

operation before January 1, 2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 145.22 and Chapter 127, subchapters F and G covering such NO_x Budget units to the Department within 6 months of the effective date of this subchapter.

(2) For any source, with any NO_x Budget unit under § 145.4 that commences operation on or after January 1, 2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 145.22 and Chapter 127 covering such NO_x Budget unit to the Department as provided for in Chapter 127, subchapters B, D, or E whichever is applicable.

§ 145.22. Information requirements for NO_x Budget permit applications.

In addition to the requirements of Chapter 127, a complete NO_x Budget permit application shall include the following elements concerning the NO_x Budget source for which the application is submitted, in a format prescribed by the Department:

(1) Identification of the NO_x Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(2) Identification of each NO_x Budget unit at the NO_x Budget source and whether it is a NO_x Budget unit under § 145.4 or §§ 145.80 through 145.88;

(3) The standard requirements under § 145.6; and

(4) For each NO_x Budget opt-in unit at the NO_x Budget source, the following certification statements by the NO_x authorized account representative:

(i) "I certify that each unit for which this permit application is submitted under §§ 145.80 through 145.88 is not a NO_x Budget unit under § 145.4 and is not covered by a retired unit exemption under § 145.5 that is in effect."

(ii) If the application is for an initial NO_x Budget opt-in permit, "I certify that each unit for which this permit application is submitted under §§ 145.80 through 145.88 is currently operating, as that term is defined under § 145.2."

§ 145.23. NO_x Budget permit contents.

(a) In addition to the requirements of Chapter 127, a NO_x Budget permit will contain, in a format prescribed by the Department, all elements required for a complete NO_x Budget permit application under § 145.22.

(b) A NO_x Budget permit shall incorporate the requirements of this subchapter.

§ 145.24. Effective date of initial NO_x Budget permit.

The initial NO_x Budget permit covering a NO_x Budget unit for which a complete NO_x Budget permit application is timely submitted under § 145.21(b) shall become effective upon issuance.

§ 145.25. NO_x Budget permit revisions.

Revisions to a NO_x Budget permit shall be done in accordance with Chapter 127.

§ 145.30 Compliance certification report.

(a) Applicability and deadline. In addition to the requirements of Section 127.513, for each control period in which one or more NO_x Budget units at a source are subject to the NO_x Budget emissions limitation, the NO_x authorized account representative of the source shall submit to the Department and the NO_x Budget Administrator by November 30 of that year, a compliance certification report for the source covering all such units.

(b) Contents of report. The NO_x authorized account representative shall include in the compliance certification report under subsection (a) the following elements, in a format prescribed by the NO_x Budget Administrator, concerning each unit at the source and subject to the NO_x Budget emissions limitation for the control period covered by the report:

- (1) Identification of each NO_x Budget unit;
- (2) At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under § 145.54 for the control period;
- (3) At the NO_x authorized account representative's option, for units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with §§ 145.70 through 145.76, the percentage of allowances that is to be deducted from each unit's compliance account under § 145.54(e); and
- (4) The compliance certification under subsection (c).

(c) Compliance certification. In the compliance certification report under subsection (a), the NO_x authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x Budget units at the source in compliance with the NO_x Budget Trading Program, whether each NO_x Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x Budget Trading Program applicable to the unit, including:

- (1) Whether the unit was operated in compliance with the NO_x Budget emissions limitation;

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_x emissions to the unit, in accordance with §§ 145.70 through 145.76;

(3) Whether all the NO_x emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with §§ 145.70 through 145.76. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;

(4) Whether the facts that form the basis for certification under §§ 145.70 through 145.76 of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under §§ 145.70 through 145.76, if any, has changed; and

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

(6) A report on methods used to comply with the requirements of Section 127.12a (k).

§ 145.31. The Department's action on compliance certifications.

(a) The Department or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) NO_x 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).

§ 145.40. State trading program budget.

The trading program budget allocated by the Department under § 145.42 for a control period will equal the total number of tons of NO_x emissions apportioned to the NO_x Budget units under § 145.4 in Pennsylvania for the control period, as follows:

(a) The NO_x budget for electric generating units under this subchapter is 52,000 tons per season.

(b) The NO_x budget for non-electric generating units under this subchapter is 5,600 tons per season.

(c) The NO_x budget may be adjusted as provided in §§ 145.80 through 145.88 and §§ 145.90 and 145.55(c)(10).

§ 145.41. Timing requirements for NO_x allowance allocations.

(a) The Department will submit to the NO_x allowance tracking system the NO_x allowance allocations, in accordance with § 145.42, for the control periods in 2003, 2004, and 2005.

(b) By April 1, 2003 and April 1 of each year thereafter, the Department will submit to the NO_x allowance tracking system the NO_x allowance allocations, in accordance with § 145.42, for the control period in the year that is three years after the year of the applicable deadline for submission under this subsection (b). If the Department fails to submit the NO_x allowance allocations in accordance with this subsection (b), the same number of NO_x allowances as were allocated for the preceding control period will be allocated for the control period.

(c) By April 1, 2004 and April 1 of each year thereafter, the Department will submit to the NO_x allowance tracking system the NO_x allowance allocations, in accordance with § 145.42, for any NO_x allowances remaining in the allocation set-aside for the prior control period.

§ 145.42. NO_x allowance allocations.

(a) Unit heat input.

(1) The heat input (in mmBtu) used for calculating NO_x allowance allocations for each NO_x Budget unit under § 145.4 will be:

(i) For a NO_x allowance allocation under § 145.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under § 145.4(1) or the control period in 1995 if the unit is under § 145.4(2); and

(ii) For a NO_x allowance allocation under § 145.41(b), the unit's heat input for the control period in the year that is four years before the year for which the NO_x allocation is being calculated.

(2) The unit's total heat input for the control period in each year specified under paragraph (1) of this section will be determined in accordance with 40 CFR Part 75 if the NO_x Budget unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year. The best available data will be determined in the following order: emission statements submitted as required by Section 135.21, data collected by continuous emission monitors

required by Chapter 139, data submitted to the Department as required by Section 135.3, data from multiple stack or fuel tests, data from a single stack or fuel test.

(b) For each control period under § 145.41, the Department will allocate to all NO_x Budget units under §145.4(1) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (1), a total number of NO_x allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NO_x emissions in the State trading program budget apportioned to electric generating units under § 145.40 in accordance with the following procedures:

(1) The Department will allocate NO_x allowances to each NO_x Budget unit under §145.4(1) in an amount equaling 0.15 lb/mmBtu or allowable emission level, whichever is lower, multiplied by the heat input determined under subsection (a), rounded to the nearest whole NO_x allowance as appropriate.

(2) If the initial total number of NO_x allowances allocated to all NO_x Budget units under §145.4(1) in Pennsylvania for a control period under paragraph (1) does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO_x emissions in the Pennsylvania trading program budget apportioned to electric generating units, the Department will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period under paragraph (1) so that the total number of NO_x allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO_x emissions in the Pennsylvania trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO_x emissions in the Pennsylvania trading program budget apportioned to electric generating units divided by the total number of NO_x allowances allocated under paragraph (b)(1) of this section, and rounding to the nearest whole NO_x allowance as appropriate.

(c) For each control period under § 145.41, the Department will allocate to all NO_x Budget units under §145.4(2) in Pennsylvania that commenced operation before May 1 of the period used to calculate heat input under subsection (a), a total number of NO_x allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NO_x emissions in the Pennsylvania trading program budget apportioned to non-electric generating units under § 145.40 in accordance with the following procedures:

(1) The Department will allocate NO_x allowances to each NO_x Budget unit under §145.4(2) in an amount equaling 0.17 lb/mmBtu or allowable emission level, whichever is lower, multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NO_x allowance as appropriate.

(2) If the initial total number of NO_x allowances allocated to all NO_x Budget units under §145.4(2) in Pennsylvania for a control period under paragraph (1) does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO_x

emissions in the Pennsylvania trading program budget apportioned to non-electric generating units, the Department will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period under paragraph (1) so that the total number of NO_x allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO_x emissions in the Pennsylvania trading program budget apportioned to non-electric generating units. This adjustment will be made by multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO_x emissions in the Pennsylvania trading program budget apportioned to non-electric generating units divided by the total number of NO_x allowances allocated under paragraph (1), and rounding to the nearest whole NO_x allowance as appropriate.

(d) For each control period under § 145.41, the Department will allocate NO_x allowances to NO_x Budget units under § 145.4 in Pennsylvania that commenced operation, or are projected to commence operation, on or after May 1 of the period used to calculate heat input under subsection (a)(1), in accordance with the following procedures:

(1) The Department will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NO_x allowances equal to 5 percent in 2003, 2004, and 2005, or 2 percent thereafter, of the tons of NO_x emissions in the Pennsylvania trading program budget under § 145.40, rounded to the nearest whole NO_x allowance as appropriate.

(2) The NO_x authorized account representative of a NO_x Budget unit under paragraph (d) of this section may submit to the Department a request, as part of a plan approval application under Chapter 127, subchapter B, to be allocated NO_x allowances for no more than five consecutive control periods under § 145.41, starting with the control period during which the NO_x Budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which it will receive an allocation under subsection (b) or (c). NO_x Budget affected units that have been issued their plan approvals as of the effective date of this subchapter may submit a request for allowances prior to May 1 of the first control period for which the NO_x allowance allocation is requested and after the date on which the Department approves a plan approval for the NO_x Budget unit under Chapter 127.

(3) In a NO_x allowance allocation request under paragraph (2), the NO_x authorized account representative for units under § 145.4(1) may request for a control period NO_x allowances in an amount that does not exceed 0.15 lb/mmBtu or allowable emission rate, whichever is less, multiplied by the NO_x Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(4) In a NO_x allowance allocation request under paragraph (2), the NO_x authorized account representative for units under § 145.4(2) may request for a control period NO_x

allowances in an amount that does not exceed 0.17 lb/mmBtu or allowable emission rate, whichever is less, multiplied by the NO_x Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(5) The Department will review, and allocate NO_x allowances pursuant to, each NO_x allowance allocation request under paragraph (2) in the order that plan approval is issued.

(i) Upon receipt of the NO_x allowance allocation request, the Department will determine whether, and will make any necessary adjustments to the request to ensure that, for units under § 145.4(1), the control period and the number of allowances specified are consistent with the requirements of paragraphs (2) and (3) and, for units under § 145.4(2), the control period and the number of allowances specified are consistent with the requirements of paragraphs (2) and (4).

(ii) If the allocation set-aside for the control period for which NO_x allowances are requested has an amount of NO_x allowances not less than the number requested (as adjusted under subparagraph (i)), the Department will allocate the amount of the NO_x allowances requested (as adjusted under subparagraph (i)) to the NO_x Budget unit upon issuance of the plan approval under Chapter 127.

(iii) If the allocation set-aside for the control period for which NO_x allowances are requested has a smaller amount of NO_x allowances than the number requested (as adjusted under subparagraph (i)), the Department will deny in part the request and allocate only the remaining number of NO_x allowances in the allocation set-aside to the NO_x Budget unit.

(iv) Once an allocation set-aside for a control period has been depleted of all NO_x allowances, the Department will deny, and will not allocate any NO_x allowances pursuant to, any NO_x allowance allocation request under which NO_x allowances have not already been allocated for the control period.

(e) For a NO_x Budget unit that is allocated NO_x allowances under subsection (d) for a control period, NO_x allowances will be deducted under § 145.54(b) or (e) to account for the actual utilization of the unit during the control period. The number of NO_x allowances will be calculated to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NO_x allowance as appropriate, provided that the number of NO_x allowances to be deducted shall be zero if the number calculated is less than zero:

NO_x allowances deducted for actual utilization for units under § 145.4(1) = (Unit's NO_x allowances allocated for control period) - (Unit's actual control period utilization x 0.15 lb/mmBtu or allowable emission rate, whichever is less); and

NO_x allowances deducted for actual utilization for units under § 145.4(2) = (Unit's NO_x allowances allocated for control period) - (Unit's actual control period utilization x 0.17 lb/mmBtu or allowable emission rate, whichever is less) where:

“Unit's NO_x allowances allocated for control period” is the number of NO_x allowances allocated to the unit for the control period under subsection (d); and

“Unit's actual control period utilization” is the utilization (in mmBtu), as defined in § 145.2, of the unit during the control period.

(f) After making the deductions for compliance under § 145.54(b) or (e) for a control period, the Department will allocate any remaining NO_x allowances to the NO_x Budget units using the following formula and rounding to the nearest whole NO_x allowance as appropriate:

Unit's share of NO_x allowances remaining in allocation set-aside = Total NO_x allowances remaining in allocation set-aside x (Unit's NO_x allowance allocation ÷ (State trading program budget excluding allocation set-aside))

Where:

“Total NO_x allowances remaining in allocation set-aside” is the total number of NO_x allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies;

“Unit's NO_x allowance allocation” is the number of NO_x allowances allocated under paragraph (b) or (c) of this section to the unit for the control period to which the allocation set-aside applies; and

“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 percent if the control period is in 2003, 2004, or 2005 or 98 percent if the control period is in any year thereafter, rounded to the nearest whole NO_x allowance as appropriate.

§ 145.50. NO_x Allowance Tracking System accounts.

(a) Nature and function of compliance accounts and overdraft accounts. Consistent with § 145.51(a), the NO_x Budget Administrator will establish one compliance account for each NO_x Budget unit and one overdraft account for each source with one or more NO_x Budget units. Allocations of NO_x allowances pursuant to §§ 145.40 through 145.42 or § 145.88 and deductions or transfers of NO_x allowances pursuant to § 145.31, § 145.54, § 145.56, §§ 145.6. through 145.62, or §§ 145.80 through 145.88 will be recorded in the compliance accounts or overdraft accounts.

(b) Nature and function of general accounts. Consistent with § 145.51(b), the NO_x Budget Administrator will establish, upon request, a general account for any person. Transfers of

allowances pursuant to §§ 145.60 through 145.62 will be recorded in the general account.

§ 145.51. Establishment of accounts.

(a) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under § 145.13, the NO_x Budget Administrator will establish:

(1) A compliance account for each NO_x Budget unit for which the account certificate of representation was submitted; and

(2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_x Budget units.

(b) General accounts.

(1) Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the NO_x Budget Administrator and shall include the following elements in a format prescribed by the NO_x Budget Administrator:

(i) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;

(ii) Organization name and type of organization;

(iii) A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(iv) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Department, Administrator or a court regarding the general account."

(v) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(vi) Unless otherwise required by the NO_x Budget Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the NO_x Budget Administrator. The Department or NO_x Budget Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Upon receipt by the NO_x Budget Administrator of a complete application for a general account under paragraph (1):

(i) The NO_x Budget Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the Department, Administrator or a court regarding the general account.

(iii) Each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iv) The NO_x Budget Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subparagraph (iii).

(3) Representative designation.

(i) An application for a general account may designate one and only one NO_x authorized account representative and one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(ii) Upon receipt by the NO_x Budget Administrator of a complete application for a general account under paragraph (1), any representation, action, inaction, or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(4) Revising the account representative.

(i) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the NO_x Budget Administrator of a superseding complete application for a general account under paragraph (1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the NO_x Budget Administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(ii) The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the NO_x Budget Administrator of a superseding complete application for a general account under paragraph (1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the NO_x Budget Administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(iii) Revision of ownership listing.

(A) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the

decisions, orders, actions, and inactions of the NO_x Budget Administrator, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

(5) Reliance on application.

(i) Once a complete application for a general account under paragraph (1) has been submitted and received, the NO_x Budget Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (1) is received by the NO_x Budget Administrator.

(ii) Except as provided in paragraph (4), no objection or other communication submitted to the NO_x Budget Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the Department or NO_x Budget Administrator under the NO_x Budget Trading Program.

(iii) The Department or NO_x Budget Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(c) Account identification. The NO_x Budget Administrator will assign a unique identifying number to each account established under subsections (a) or (b).

§ 145.52. NO_x Allowance Tracking System responsibilities of NO_x authorized account representative.

(a) Following the establishment of a NO_x Allowance Tracking System account, all submissions to the Department or the NO_x Budget Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.

(b) Authorized account representative identification. The NO_x Budget Administrator will assign a unique identifying number to each NO_x authorized account representative.

§ 145.53. Recordation of NO_x allowance allocations.

(a) The NO_x Budget Administrator will record the NO_x allowances for 2003 in the NO_x Budget units' compliance accounts and the allocation set-asides, as allocated under §§ 145.40 through 145.42. The NO_x Budget Administrator will also record the NO_x allowances allocated under § 145.88(a)(1) for each NO_x Budget opt-in source in its compliance account.

(b) Each year, after the NO_x Budget Administrator has made all deductions from a NO_x Budget unit's compliance account and the overdraft account pursuant to § 145.54, the NO_x Budget Administrator will record NO_x allowances, as allocated to the unit under §§ 145.40 through 145.42 or under § 145.88(a)(2), in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the NO_x Budget Administrator will also record NO_x allowances, as allocated under §§ 145.40 through 145.42, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(c) Serial numbers for allocated NO_x allowances. Each NO_x allowance will be assigned a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

§ 145.54. Compliance.

(a) NO_x allowance transfer deadline. The NO_x allowances are available to be deducted for compliance with a unit's NO_x Budget emissions limitation for a control period in a given year only if the NO_x allowances:

(1) Were allocated for a control period in a prior year or the same year; and

(2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under § 145.60 by the NO_x allowance transfer deadline for that control period.

(b) Deductions for compliance.

(1) Following the recordation, in accordance with § 145.61, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for a control period, the NO_x Budget Administrator will deduct NO_x allowances available under subparagraph (a) to cover the unit's NO_x emissions (as determined in accordance with §§ 145.70 through 145.76), or to account for actual utilization under § 145.42(e), for the control period:

(i) From the compliance account; and

(ii) Only if no more NO_x allowances available under subsection (a) remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the NO_x Budget Administrator will begin with the unit having the compliance account with the lowest NO_x Allowance Tracking System account number and end with the unit having the compliance account with the highest NO_x Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(2) NO_x allowances will be deducted first under subparagraph (i) and then under subparagraph (ii):

(i) Until the number of NO_x allowances deducted for the control period equals the number of tons of NO_x emissions, determined in accordance with §§ 145.70 through 145.76, from the unit for the control period for which compliance is being determined, plus the number of NO_x allowances required for deduction to account for actual utilization under § 145.42(e) for the control period; or

(ii) Until no more NO_x allowances available under subsection (a) remain in the respective account.

(c) Allowance identification.

(1) Identification of NO_x allowances by serial number. The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subsections (b), (d), or (e). Such identification shall be made in the compliance certification report submitted in accordance with § 145.30.

(2) First-in, first-out. NO_x allowances will be deducted for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under paragraph (1), or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those NO_x allowances that were allocated for the control period to the unit under §§ 145.40 through 145.42 or §§ 145.80 through 145.88;

(ii) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to §§ 145.60 through 145.62, in order of their date of recordation;

(iii) Those NO_x allowances that were allocated for a prior control period to the unit under §§ 145.40 through 145.42 or §§ 145.80 through 145.88; and

(iv) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to §§ 145.60 through 145.62, in order of their date of recordation.

(d) Deductions for excess emissions.

(1) After making the deductions for compliance under subsection (b), the NO_x Budget Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the NO_x Budget Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(3) Any allowance deduction required under subsection (d) shall not affect the liability of the owners and operators of the NO_x Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or the Air Pollution Control Act. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

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

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

(1) The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with § 145.30.

(2) Notwithstanding subparagraph (i), the NO_x Budget Administrator will deduct NO_x allowances for each unit until the number of NO_x allowances deducted equals the unit's

identified percentage (under paragraph (e)(1)) of the number of tons of NO_x emissions, as determined in accordance with §§ 145.70 through 145.76, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of allowances required for deduction to account for actual utilization under §145.42(e) for the control period.

(f) The NO_x Budget Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subsections (b), (d), or (e).

§ 145.55. Banking.

(a) NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(1) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under § 145.31, § 145.54, § 145.56, §§ 145.60 through 145.62, or §§ 145.80 through 145.88.

(2) The NO_x Budget Administrator will designate, as a “banked” NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after all deductions have been made for a given control period from the compliance account or overdraft account pursuant to § 145.54.

(b) Each year starting in 2004, after the designation of banked NO_x allowances under paragraph (a)(2) and before May 1 of the year, the extent to which banked NO_x allowances may be used for compliance in the control period for the current year will be determined, as follows:

(1) The total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts will be determined.

(2) If the total number of banked NO_x allowances determined, under paragraph (1), to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with § 145.54.

(3) If the total number of banked NO_x allowances determined, under paragraph (1), to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located, any banked allowance may be deducted for compliance in accordance with § 145.54, except as follows:

(i) A ratio will be determined as follows: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NO_x Budget

units are located and divided by the total number of banked NO_x allowances determined, under paragraph (1), to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The number of banked NO_x allowances in each compliance account or overdraft account will be multiplied by the ratio developed in subparagraph (i) and rounded. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with § 145.54. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with § 145.54, except that, if such NO_x allowances are used to make a deduction, two such NO_x allowances must be deducted for each deduction of one NO_x allowance required under § 145.54.

(c) Any NO_x Budget unit may reduce its NO_x emission rate in the 2001 or 2002 control period, the owner or operator of the unit may request early reduction credits, and the Department may allocate NO_x allowances in 2003 to the unit in accordance with the following requirements.

(1) Each NO_x Budget unit for which the owner or operator requests any early reduction credits under paragraph (4) shall monitor NO_x emissions in accordance with §§ 145.70 through 145.76 starting in the 2000 control period and for each control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during the 2000 control period, and the unit must be in compliance with any applicable State or Federal NO_x emissions or emissions-related requirements.

(2) NO_x emission rate and heat input under paragraphs (3) through (5) shall be determined in accordance with §§ 145.70 through 145.76.

(3) Each NO_x Budget unit for which the owner or operator requests any early reduction credits under paragraph (4) shall reduce its NO_x emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NO_x emission rate in the 2000 control period.

(4) The NO_x authorized account representative of a NO_x Budget unit located in Pennsylvania that meets the requirements of paragraphs (1) and (3) may submit to the Department a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2001 or 2002 in accordance with paragraph (3).

(i) In the early reduction credit request, the NO_x authorized account may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between 0.25 lb/mmBtu and the unit's NO_x emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton.

(ii) The early reduction credit request must be submitted, in a format specified by the Department, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made.

(5) The Department will allocate NO_x allowances, to NO_x Budget units meeting the requirements of paragraphs (1) and (3) and covered by early reduction requests meeting the requirements of paragraph (4)(ii), in accordance with the following procedures:

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

(ii) If Pennsylvania's compliance supplement pool has an amount of NO_x allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under subparagraph (i)), the Department will allocate to each NO_x Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under subparagraph (i)).

(iii) If Pennsylvania's compliance supplement pool has a smaller amount of NO_x allowances than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under subparagraph (i)), the Department will allocate NO_x allowances to each NO_x Budget unit covered by such accepted requests according to the following formula:

$$\text{Unit's allocated early reduction credits} = \left[\frac{\text{Unit's adjusted early reduction credits}}{\text{Total adjusted early reduction credits requested by all units}} \right] \times (\text{Available NO}_x \text{ allowances from Pennsylvania's compliance supplement pool})$$

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_x allowances from Pennsylvania's compliance supplement pool” is the number of NO_x allowances in Pennsylvania'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_x allowances determined under paragraph (5). The allocations will be recorded in the NO_x allowance tracking system to the extent that they are consistent with the requirements of paragraphs (1) through (5).

(7) NO_x allowances recorded under paragraph (6) may be deducted for compliance under §145.54 for the control periods in 2003 or 2004. Notwithstanding paragraph (a) of this section, the NO_x Budget Administrator will deduct as retired any NO_x allowance that is recorded under paragraph (6) and is not deducted for compliance in accordance with §145.54 for the control period in 2003 or 2004.

(8) NO_x allowances recorded under paragraph (6) are treated as banked allowances in 2004 for the purposes of subsections (a) and (b).

(9) NO_x allowances contained in compliance or overdraft accounts by affected units located in Pennsylvania under Section 123.110 (relating to source compliance requirements) for years 2000 through 2002 shall be deemed to have met the requirements of subsections (a) and (c). The NO_x authorized account representative must submit the application as required by subsection (c) to the Department.

(10) The compliance supplement pool for Pennsylvania is 13,716 allowances.

§ 145.56. Account error.

The NO_x Budget Administrator may correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making such correction, the NO_x Budget Administrator will notify the NO_x authorized account representative for the account.

§ 145.57. Closing of general accounts.

(a) The NO_x authorized account representative of a general account may instruct the NO_x Budget Administrator to close the account by submitting a statement requesting deletion of the account from the NO_x Allowance Tracking System and by correctly submitting for recordation under § 145.60 an allowance transfer of all NO_x allowances in the account to one or more other NO_x Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the NO_x Budget Administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the NO_x Budget Administrator receives a correctly submitted transfer of NO_x allowances into the account under § 145.60 or a statement submitted by the NO_x authorized account representative requesting that the

account should not be closed.

§ 145.60. Submission of NO_x allowance transfers.

The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the NO_x Budget Administrator. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the NO_x Budget Administrator:

- (1) The numbers identifying both the transferor and transferee accounts;
- (2) A specification by serial number of each NO_x allowance to be transferred; and
- (3) The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

§ 145.61. NO_x transfer recordation.

(a) Within 5 business days of receiving a NO_x allowance transfer, except as provided in subsection (b), the NO_x Budget Administrator will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:

- (1) The transfer is correctly submitted under § 145.60;
- (2) The transferor account includes each NO_x allowance identified by serial number in the transfer; and
- (3) The transfer meets all other requirements of this subchapter.

(b) A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for a control period prior to or the same as the control period to which the NO_x allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO_x allowance allocations in § 145.53(b).

(c) A NO_x 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_x allowance transfer under § 145.61, the NO_x Budget Administrator will notify each party to the transfer. Notice will be given to the NO_x authorized account representatives of both the transferor and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a NO_x allowance transfer that fails to meet the requirements of § 145.61(a), the NO_x Budget Administrator will notify the NO_x authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a NO_x allowance transfer for recordation following notification of non-recordation.

§ 145.70. General Monitoring Requirements.

The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x Budget unit, shall comply with the monitoring and reporting requirements as provided in these §§ 145.70 through 145.76 and in subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in § 145.2 and in 40 CFR § 72.2 shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in 40 CFR Part 75 shall be replaced by the terms “NO_x Budget unit,” “NO_x authorized account representative,” and “continuous emission monitoring system” (or “CEMS”), respectively, as defined in § 145.2.

(1) Requirements for installation, certification, and data accounting. The owner or operator of each NO_x Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, as provided in §§ 145.80 through 145.88:

(i) Install all monitoring systems required under this subchapter for monitoring NO_x mass. This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input, and flow, in accordance with 40 CFR §§ 75.72 and 75.76.

(ii) Install all monitoring systems for monitoring heat input, if required under § 145.76 for developing NO_x allowance allocations.

(iii) Successfully complete all certification tests required under § 145.71 and meet all other provisions of this subchapter and 40 CFR Part 75 applicable to the monitoring systems under paragraphs (i) and (ii) of this section.

(iv) Record and report data from the monitoring systems under paragraphs (1)(i) and (ii).

(2) Compliance dates. The owner or operator must meet the requirements of paragraphs (1)(i) through (1)(iii) on or before the following dates and must record and report data on and after the following dates:

(i) NO_x Budget units for which the owner or operator intends to apply for early reduction credits under § 145.55(d) must comply with the requirements of these §§ 145.70 through 145.76 by May 1, 2000.

(ii) Except for NO_x Budget units under paragraph (i), NO_x Budget units under § 145.4 that commence operation before January 1, 2002, must comply with the requirements of these §§ 145.70 through 145.76 by May 1, 2002.

(iii) NO_x Budget units under § 145.4 that commence operation on or after January 1, 2002 and that report on an annual basis under § 145.74(d) must comply with the requirements of these §§ 145.70 through 145.76 by the later of the following dates:

(A) May 1, 2002; or

(B) the earlier of:

(I) 180 days after the date on which the unit commences operation or,

(II) For units under § 145.4(1), 90 days after the date on which the unit commences commercial operation.

(iv) NO_x Budget units under § 145.4 that commence operation on or after January 1, 2002 and that report on a control season basis under § 145.74(d) must comply with the requirements of these §§ 145.70 through 145.76 by the later of the following dates:

(A) the earlier of:

(I) 180 days after the date on which the unit commences operation or,

(II) for units under § 145.4(1), 90 days after the date on which the unit commences commercial operation.

(B) However, if the applicable deadline under paragraph (2)(iv)(A) does not occur during a control period, May 1 immediately following the date determined in accordance with paragraph (2)(iv)(A).

(v) For a NO_x Budget unit with a new stack or flue for which construction is completed after the applicable deadline under paragraph (2)(i), (2)(ii) or (2)(iii) of this section or §§ 145.80 through 145.88, 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(vi) For a unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, the compliance dates specified under §§ 145.80 through 145.88.

(3) Reporting data prior to initial certification.

(i) The owner or operator of a NO_x Budget unit that misses the certification deadline under paragraph (2)(i) is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under paragraph (2)(i).

(ii) The owner or operator of a NO_x Budget unit under paragraphs (2)(iii) or (2)(iv) must determine, record and report NO_x mass, heat input (if required for purposes of allocations) and any other values required to determine NO_x Mass (e.g. NO_x emission rate and heat input or NO_x concentration and stack flow) using the provisions of § 40 CFR 75.70(g), from the date and hour that the unit starts operating until all required certification tests are successfully completed.

(4) Prohibitions.

(i) No owner or operator of a NO_x Budget unit or a non- NO_x Budget unit monitored under 40 CFR § 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 145.75.

(ii) No owner or operator of a NO_x Budget unit or a non- NO_x Budget unit monitored under 40 CFR § 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subchapter and 40 CFR Part 75 except as provided for in 40 CFR §75.74.

(iii) No owner or operator of a NO_x Budget unit or a non- NO_x Budget unit monitored under 40 CFR § 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subchapter and 40 CFR Part 75 except as provided for in 40 CFR §75.74.

(iv) No owner or operator of a NO_x Budget unit or a non- NO_x Budget unit monitored under 40 CFR § 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this subchapter, except under any one of the following circumstances:

(A) During the period that the unit is covered by a retired unit exemption under § 145.5 that is in effect;

(B) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable

provisions of this subchapter and 40 CFR Part 75, by the Department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(C) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 145.71(b)(2).

(5) Notwithstanding the provisions of this section and §§ 145.71 through 145.76, sources that are also subject to the monitoring provisions of Chapter 139 (relating to sampling and testing) must demonstrate compliance with those provisions in addition to the provisions of this section and §§ 145.71 through 145.76.

§ 145.71. Initial certification and recertification procedures.

(a) The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR Part 75, except that:

(1) If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR § 75.17(a) or (b) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR § 75.66 for an alternative to a requirement in 40 CFR § 75.17, the NO_x authorized account representative shall resubmit the petition to the Administrator under § 145.75(a) to determine if the approval applies under the NO_x Budget Trading Program.

(2) For any additional CEMS required under the common stack provisions in 40 CFR § 75.72, or for any NO_x concentration CEMS used under the provisions of 40 CFR § 75.71(a)(2), the owner or operator shall meet the requirements of paragraph (b) of this section.

(b) The owner or operator of a NO_x 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 owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR § 75.19 shall also meet the requirements of subsection (c) of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under 40 CFR Subpart E of Part 75 shall also meet the requirements of subsection (d) of this section. The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR § 75.72, or that uses a NO_x concentration CEMS under 40 CFR § 75.71(a)(2) also shall comply with the following initial certification and recertification procedures:

(1) Requirements for initial certification. The owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR Part 75 (which includes the

automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR § 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in § 145.70(2). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this part in a location where no such monitoring system was previously installed, initial certification according to 40 CFR § 75.20 is required.

(2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or Department determines significantly affects the ability of the system to accurately measure or record NO_x mass emissions or heat input or to meet the requirements of 40 CFR § 75.21 or 40 CFR Appendix B to part 75, the owner or operator shall recertify the monitoring system according to 40 CFR § 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR § 75.20(b). Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

(3) Certification approval process for initial certifications and recertification.

(i) Notification of certification. The NO_x authorized account representative shall submit to the Department and the appropriate EPA Regional Office a written notice of the dates of certification in accordance with § 145.73.

(ii) Certification application. The NO_x authorized account representative shall submit to the Department a certification application for each monitoring system required under 40 CFR Subpart H of Part 75. A complete certification application shall include the information specified in subpart H of 40 CFR Part 75.

(iii) Except for units using the low mass emission excepted methodology under 40 CFR § 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR § 75.20(a)(3). A provisionally certified monitor may be used under the NO_x Budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under paragraph (b)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval.

(iv) Certification application formal approval process. The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator after receipt and review of the complete certification application under subparagraph (ii). In the event the Department does not issue such a notice, each monitoring system which meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the NO_x Budget Trading Program.

(A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the Department will issue a written notice of approval of the certification application.

(B) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under subparagraph (ii) has been received by the Department. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under clause (C).

(C) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of these §§ 145.70 through 145.76, or if the certification application is incomplete and the requirement for disapproval under clause (B) has been met, the Department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subparagraph (v) for each monitoring system or component thereof which is disapproved for initial certification.

(D) Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with § 145.72(b).

(v) Procedures for loss of certification. If the Department issues a notice of disapproval of a certification application under subparagraph (iv)(C) or a notice of

disapproval of certification status under subparagraph (b)(3)(iv)(D), then:

(A) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR § 75.20(a)(5)(i):

(I) For units using or intending to monitor for NO_x emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR § 75.19, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit.

(II) For units intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the unit under Section 2.1 of Appendix A of 40 CFR Part 75.

(B) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subparagraphs (b)(3)(i) and (ii); and

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(c) Initial certification and recertification procedures for low mass emission units using the excepted methodologies under 40 CFR § 75.19. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR § 75.19 shall meet the applicable general operating requirements of 40 CFR § 75.10, the applicable requirements of 40 CFR § 75.19, and the applicable certification requirements of § 145.71 of this subchapter, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program, as of the following dates:

(i) For a unit that commences operation before its compliance deadline under § 145.71(b), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR § 75.19 until the completion of the period for the Department review; or

(ii) For a unit that commences operation after its compliance deadline under § 145.71(b), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR § 75.19 until the completion of the period for Department review.

(d) Certification/recertification procedures for alternative monitoring systems. The NO_x authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the Administrator under Subpart E of 40 CFR Part 75 shall apply for certification to the Department prior to use of the system under the NO_x Trading Program. The NO_x authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in subsection (b). The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subsection (b)(3) and 40 CFR § 75.20(f).

§ 145.72 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance requirements of Appendix B of 40 CFR Part 75, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of 40 CFR Part 75.

(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 145.71 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of such system or component. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in § 145.71 for each disapproved system.

§ 145.73. Notifications.

The NO_x authorized account representative for a NO_x Budget unit shall submit written notice to the Department and the Administrator in accordance with 40 CFR § 75.61, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the Department.

§ 145.74. Recordkeeping and reporting.

(a) General provisions.

(1) In addition to the requirements of Chapter 127, the NO_x authorized account representative shall comply with all recordkeeping and reporting requirements in this

section and with the requirements of § 145.10(e).

(2) If the NO_x authorized account representative for a NO_x Budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of 40 CFR Part 75 and which includes data and information required under this subchapter or subpart H of 40 CFR Part 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72, the submission must also be signed by the designated representative or the alternative designated representative.

(b) Monitoring Plans.

(1) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR § 75.62, except that the monitoring plan shall also include all of the information required by subpart H of 40 CFR part 75.

(2) The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR § 75.62, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR Part 75.

(c) Certification Applications. The NO_x authorized account representative shall submit an application to the Department within 45 days after completing all initial certification or recertification tests required under § 145.71 including the information required under subpart H of 40 CFR Part 75.

(d) Quarterly reports. The NO_x authorized account representative shall submit quarterly reports, as follows:

(1) All NO_x budget units must meet the annual reporting requirements of this subchapter. The NO_x authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) For units that elect to comply with the early reduction credit provisions under § 145.55 of this subchapter, the calendar quarter that includes the date of initial provisional certification under § 145.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or

(ii) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under § 145.70(2)(i), the earlier of the calendar quarter that includes the date of initial provisional certification under § 145.71(b)(3)(iii) or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or

(iii) For a unit that commences operation after May 1, 2002, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

(2) The NO_x authorized account representative shall submit each quarterly report to the Department and NO_x Budget Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR Part 75 and 40 CFR § 75.64.

(i) For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR Part 75 for each NO_x Budget unit (or group of units using a common stack) as well as information required in subpart G of 40 CFR part 75.

(ii) For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR Part 75 for each NO_x Budget unit (or group of units using a common stack).

(3) Compliance certification. The NO_x authorized account representative shall submit to the Department and NO_x Budget Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(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; and

(ii) For a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with 40 CFR § 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO_x emissions; and

(iii) For a unit that is reporting on a control period basis under § 145.74(d) the NO_x emission rate and NO_x concentration values substituted for missing data under subpart D of 40 CFR Part 75 are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

§ 145.75. Petitions.

(a) The NO_x authorized account representative of a NO_x Budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR § 75.66 to the Administrator requesting approval to apply an alternative to any requirement of §§ 145.70 through 145.76.

(1) Application of an alternative to any requirement of §§ 145.70 through 145.76 is in accordance with §§ 145.70 through 145.76 only to the extent that the petition is approved by the Administrator.

(2) Notwithstanding paragraph (1), if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR § 75.72, the petition is governed by subsection (b).

(b) The NO_x authorized account representative of a NO_x Budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR § 75.66 to the Department and the Administrator requesting approval to apply an alternative to any requirement of §§ 145.70 through 145.76.

(1) The NO_x authorized account representative of a NO_x Budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR § 75.66 to the Department and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR § 75.72 or a NO_x concentration CEMS used under 40 CFR 75.71(a)(2).

(2) Application of an alternative to any requirement of these §§ 145.70 through 145.76 is in accordance with those sections only to the extent the petition under subsection (b) is approved by the Department and the Administrator.

§ 145.76. Additional Requirements to Provide Heat Input Data.

(a) The owner or operator of a unit that elects to monitor and report NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR Part 75.

(b) The owner or operator of a unit that monitors and reports NO_x Mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR Part 75 for any source that is applying for early reduction credits under § 145.55.

§ 145.80. Applicability for opt-in sources.

A unit that is not a NO_x Budget unit under § 145.4, vents all of its emissions to a stack, and is operating, may qualify, under this section and §§ 145.81 through 145.88, to become a NO_x Budget opt-in source. A unit that is a NO_x Budget unit, is covered by a retired unit exemption under § 145.5 that is in effect, or is not operating is not eligible to become a NO_x Budget opt-in source.

§ 145.81. Opt-in source general provisions.

Except as otherwise provided, a NO_x Budget opt-in source shall be treated as a NO_x Budget unit for purposes of applying §§ 145.1 through 145.76.

§ 145.82. NO_x authorized account representative for opt-in sources.

A unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, or a NO_x Budget opt-in source, located at the same source as one or more NO_x Budget units, shall have the same NO_x authorized account representative as such NO_x Budget units.

§ 145.83. Applying for NO_x Budget opt-in permit.

Applying for initial NO_x Budget opt-in permit. In order to apply for an initial NO_x Budget opt-in permit, the NO_x authorized account representative of a unit qualified under § 145.80 may submit to the Department at any time, except as provided under § 145.86(g):

- (1) A complete NO_x Budget permit application under § 145.22;
- (2) A monitoring plan submitted in accordance with §§ 145.70 through 145.76; and
- (3) A complete account certificate of representation under § 145.13, if no NO_x authorized account representative has been previously designated for the unit.

§ 145.84. Opt-in process.

The Department will issue or deny a NO_x Budget opt-in permit for a unit for which an initial application for a NO_x Budget opt-in permit under § 145.83 is submitted, in accordance with § 145.20 and the following:

- (1) Interim review of monitoring plan. The Department will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x Budget opt-in permit under § 145.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with §§ 145.70 through 145.76. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.
- (2) If the Department determines that the unit's monitoring plan is sufficient under paragraph (1) and after completion of monitoring system certification under §§ 145.70 through 145.76, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with §§ 145.70 through 145.76 for one full control period during which monitoring system availability is not less than 90 percent and during which the unit is in compliance with any applicable State or Federal NO_x emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO_x Budget unit" prior to

issuance of a NO_x Budget opt-in permit covering the unit.

(3) Based on the information monitored and reported under paragraph (2), the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NO_x emissions rate shall be calculated as the unit's total NO_x mass emissions (in lb) for the control period divided by the unit's baseline heat rate.

(4) After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraph (3), the Department will issue a draft NO_x Budget opt-in permit to the NO_x authorized account representative of the unit.

(5) Confirmation of intention to opt-in. Within 20 days after the issuance of the draft NO_x Budget opt-in permit, the NO_x authorized account representative of the unit must submit to the Department a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_x Budget opt-in permit under § 145.83. The Department will treat the failure to make a timely submission as a withdrawal of the NO_x Budget opt-in permit application.

(6) Issuance of draft NO_x Budget opt-in permit. If the NO_x authorized account representative confirms the intention to opt in the unit under paragraph (5), the Department will issue the draft NO_x Budget opt-in permit in accordance with § 145.20.

(7) Notwithstanding paragraphs (1) through (6), if at any time before issuance of a draft NO_x Budget opt-in permit for the unit, the Department determines that the unit does not qualify as a NO_x Budget opt-in source under § 145.80, the Department will issue a draft denial of a NO_x Budget opt-in permit for the unit in accordance with § 145.20.

(8) Withdrawal of application for NO_x Budget opt-in permit. A NO_x authorized account representative of a unit may withdraw its application for a NO_x Budget opt-in permit under § 145.83 at any time prior to the issuance of the final NO_x Budget opt-in permit. Once the application for a NO_x Budget opt-in permit is withdrawn, a NO_x authorized account representative wanting to reapply must submit a new application for a NO_x Budget permit under § 145.83.

(9) Effective date. The effective date of the initial NO_x Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NO_x Budget opt-in permit by the Department. The unit shall be a NO_x Budget opt-in source and a NO_x Budget unit as of the effective date of the initial NO_x Budget opt-in permit.

§ 145.85. NO_x Budget opt-in permit contents.

(a) Each NO_x Budget opt-in permit will contain all elements required for a complete NO_x Budget opt-in permit application under § 145.22.

(b) Each NO_x Budget opt-in permit shall incorporate the requirements of this subchapter.

§ 145.86. Opt-in source withdrawal from NO_x budget trading program.

(a) Requesting withdrawal. To withdraw from the NO_x Budget Trading Program, the NO_x authorized account representative of a NO_x Budget opt-in source shall submit to the Department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

(b) Conditions for withdrawal. Before a NO_x Budget opt-in source covered by a request under paragraph (a) of this section may withdraw from the NO_x Budget Trading Program and the NO_x Budget opt-in permit may be terminated under subsection (e), the following conditions must be met:

(1) For the control period immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the Department an annual compliance certification report in accordance with § 145.30.

(2) If the NO_x Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the NO_x Budget Administrator will deduct or has deducted from the NO_x Budget opt-in source's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, the full amount required under § 145.54(d) for the control period.

(3) After the requirements for withdrawal under paragraphs (1) and (2) are met, the NO_x Budget Administrator will deduct from the NO_x Budget opt-in source's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to that source under § 145.88 for any control period for which the withdrawal is to be effective. The Administrator will close the NO_x Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x Budget opt-in source. The NO_x authorized account representative for the NO_x Budget opt-in source shall become the NO_x authorized account representative for the general account.

(c) A NO_x Budget opt-in source that withdraws from the NO_x Budget Trading Program shall comply with all requirements under the NO_x Budget Trading Program concerning all years for which such NO_x Budget opt-in source was a NO_x Budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.

(d) Notification.

(1) After the requirements for withdrawal under subsections (a) and (b) are met (including deduction of the full amount of NO_x allowances required), the Department will issue a notification to the NO_x authorized account representative of the NO_x Budget opt-in source

of the acceptance of the withdrawal of the NO_x Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(2) If the requirements for withdrawal under subsections (a) and (b) are not met, the Department will issue a notification to the NO_x authorized account representative of the NO_x Budget opt-in source that the NO_x Budget opt-in source's request to withdraw is denied. If the NO_x Budget opt-in source's request to withdraw is denied, the NO_x Budget opt-in source shall remain subject to the requirements for a NO_x Budget opt-in source.

(e) Permit amendment. After the Department issues a notification under subsection (d)(1) that the requirements for withdrawal have been met, the Department will revise the NO_x Budget permit covering the NO_x Budget opt-in source to terminate the NO_x Budget opt-in permit as of the effective date specified under subsection (d)(1). A NO_x Budget opt-in source shall continue to be a NO_x Budget opt-in source until the effective date of the termination.

(f) Reapplication upon failure to meet conditions of withdrawal. If the Department denies the NO_x Budget opt-in source's request to withdraw, the NO_x authorized account representative may submit another request to withdraw in accordance with subsections (a) and (b).

(g) Ability to return to the NO_x Budget Trading Program. Once a NO_x Budget opt-in source withdraws from the NO_x Budget Trading Program and its NO_x Budget opt-in permit is terminated under this section, the NO_x authorized account representative may not submit another application for a NO_x Budget opt-in permit under § 145.83 for the unit prior to the date that is 4 years after the date on which the terminated NO_x Budget opt-in permit became effective.

§ 145.87. Opt-in source change in regulatory status.

(a) Notification. When a NO_x Budget opt-in source becomes a NO_x Budget unit under § 145.4, the NO_x authorized account representative shall notify in writing the Department and the Administrator of such change in the NO_x Budget opt-in source's regulatory status, within 30 days of such change.

(b) Department's and NO_x Budget Administrator's action.

(1) Units with active applications.

(i) When the NO_x Budget opt-in source becomes a NO_x Budget unit under § 145.4, the Department will revise the NO_x Budget opt-in source's NO_x Budget opt-in permit to meet the requirements of a NO_x Budget permit under § 145.23 as of an effective date that is the date on which such NO_x Budget opt-in source becomes a NO_x Budget unit under § 145.4.

(ii) Compliance account.

(A) The NO_x Budget Administrator will deduct from the compliance account for the NO_x Budget unit under subparagraph (b)(1)(i), or the overdraft account of the NO_x Budget source where the unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as:

(I) Any NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt-in source) under § 145.88 for any control period after the last control period during which the unit's NO_x Budget opt-in permit was effective; and

(II) If the effective date of the NO_x Budget permit revision under subparagraph (b)(1)(i) is during a control period, the NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt-in source) under § 145.88 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subparagraph (b)(1)(i), divided by the total number of days in the control period.

(B) The NO_x authorized account representative shall ensure that the compliance account of the NO_x Budget unit under subparagraph (b)(1)(i), or the overdraft account of the NO_x Budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under subparagraph (b)(1)(ii)(A). If the compliance account or overdraft account does not contain sufficient NO_x allowances, the NO_x Budget Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(iii) Allocations.

(A) For every control period during which the NO_x Budget permit revised under subparagraph (b)(1)(i) is effective, the NO_x Budget unit under subparagraph (b)(1)(i) will be treated, solely for purposes of NO_x allowance allocations under § 145.42, as a unit that commenced operation on the effective date of the NO_x Budget permit revision under subparagraph (b)(1)(i) and will be allocated NO_x allowances under § 145.42.

(B) Notwithstanding clause (A), if the effective date of the NO_x Budget permit revision under subparagraph (i) is during a control period, the following number of NO_x allowances will be allocated to the NO_x Budget unit under subparagraph (i) under § 145.42 for the control period: the number of NO_x allowances otherwise allocated to the NO_x Budget unit under § 145.42 for the control period multiplied by the ratio of the number

of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.

(2) Units with expired permits.

(i) When the NO_x authorized account representative of a NO_x Budget opt-in source does not renew its NO_x Budget opt-in permit under § 145.83, the NO_x Budget Administrator will deduct from the NO_x Budget opt-in unit's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to the NO_x Budget opt-in source under § 145.88 for any control period after the last control period for which the NO_x Budget opt-in permit is effective. The NO_x authorized account representative shall ensure that the NO_x Budget opt-in source's compliance account or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located includes the NO_x allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the NO_x Budget Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(ii) After the deduction under subparagraph (i) is completed, the NO_x Budget Administrator will close the NO_x Budget opt-in source's compliance account. If any NO_x allowances remain in the compliance account after completion of such deduction and any deduction under § 145.54, the NO_x Budget Administrator will close the NO_x Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x Budget opt-in source. The NO_x authorized account representative for the NO_x Budget opt-in source shall become the NO_x authorized account representative for the general account.

§ 145.88. NO_x allowance allocations to opt-in units.

(a) NO_x allowance allocation.

(1) By December 31 immediately before the first control period for which the NO_x Budget opt-in permit is effective, the Department will allocate NO_x allowances to the NO_x Budget opt-in source and submit to the NO_x Allowance Tracking System the allocation for the control period in accordance with subsection (b).

(2) By no later than December 31, after the first control period for which the NO_x Budget opt-in permit is in effect, and December 31 of each year thereafter, the Department will allocate NO_x allowances to the NO_x Budget opt-in source, and submit to the NO_x Allowance Tracking System allocations for the next control period, in accordance with

subsection (b).

(b) For each control period for which the NO_x Budget opt-in source has an approved NO_x Budget opt-in permit, the NO_x Budget opt-in source will be allocated NO_x allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating NO_x allowance allocations will be the lesser of:

(i) The NO_x Budget opt-in source's baseline heat input determined pursuant to § 145.84(c); or

(ii) The NO_x Budget opt-in source's heat input, as determined in accordance with §§ 145.70 through 145.76, for the control period in the year prior to the year of the control period for which the NO_x allocations are being calculated.

(2) The Department will allocate NO_x allowances to the NO_x Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under paragraph (1) multiplied by the lesser of:

(i) The NO_x Budget opt-in source's baseline NO_x emissions rate (in lb/mmBtu) determined pursuant to § 145.84(c); or

(ii) The most stringent State or Federal NO_x emissions limitation applicable to the NO_x Budget opt-in source during the control period.

§ 145.90. Emission reduction credit provisions.

(a) NO_x Budget units may create, transfer and use emission reduction credits in accordance with Chapter 127 (relating to construction, modification, reactivation and operation of sources) and this section. Emission reduction credits (ERCs) may not be used to satisfy NO_x allowance requirements.

(b) Emission reductions made through overcontrol, curtailment or shutdown for which allowances are banked are not surplus and may not be used to create ERCs.

(c) A NO_x Budget unit may transfer NO_x ERCs to a NO_x Budget unit if the new or modified NO_x Budget unit's ozone season (May 1 through September 30) allowable emissions do not exceed the ozone season portion of the baseline emissions which were used to generate the NO_x ERCs.

(d) A NO_x Budget unit may transfer NO_x ERCs to a non-NO_x Budget unit under the following conditions:

(1) The non-NO_x Budget unit's ozone season (May 1 through September 30) allowable emissions may not exceed the ozone season portion of the baseline emissions which were

used to generate the NO_x ERCs.

(2) The NO_x allowance tracking system account for NO_x Budget units which generated ERCs transferred to non-NO_x Budget units, including prior to the date of publication in the Pennsylvania Bulletin, shall have a corresponding number of NO_x allowances retired that reflect the transfer of emissions regulated under §§ 145.1 through 145.88 and this section to the non-NO_x Budget units. The amount of annual NO_x allowances deducted shall be equivalent to that portion of the non-NO_x Budget unit's NO_x control period allowable emissions which were provided for by the NO_x ERCs from the NO_x Budget unit.

(3) Allocations for NO_x allowance control periods following 2002 to the NO_x ERC generating source may not include the allowances identified in paragraph (2).

Subchapter B. Emissions of NO_x from Stationary Reciprocating Internal Combustion Engines.

§ 145.101. Applicability.

(a) Any owner or operator of a lean or rich burn stationary internal combustion engine rated at equal to or greater than 2,400 brake horsepower shall comply with the applicable requirements of this section and § 145.102 through § 145.105.

(b) Any owner or operator of a diesel stationary internal combustion engine rated at equal to or greater than 3,000 brake horsepower shall comply with the applicable requirements of this section and § 145.102 through § 145.105.

(c) Any owner or operator of a dual fuel stationary internal combustion engine rated at equal to or greater than 4,400 brake horsepower shall comply with the applicable requirements of this section and § 145.102 through § 145.105.

(d) Emergency standby electric generation units having the sole purpose of providing emergency electric service to the facility where it is located and which is permitted only to be utilized in the event of a catastrophic failure of the primary electrical power source for the facility and which has a permit limitation of a maximum cumulative operation of 208 hours per control period are exempt from the requirements of this subchapter.

§ 145.102. Definitions.

The terms used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

Department—The Department of Environmental Protection.

Diesel engine—A compression ignited two- or four-stroke engine in which liquid fuel injected

into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

Dual fuel engine—A compression ignited stationary internal combustion engine that is burning liquid fuel and gaseous fuel simultaneously.

Emergency standby engine—An internal combustion engine used only when normal power line or natural gas service fails, or for the emergency pumping of water for either fire protection or flood relief. An emergency standby engine may not be operated to supplement a primary power source when the load capacity or rating of the primary power source has been either reached or exceeded.

Engine rating—The output of an engine as determined by the engine manufacturer and listed on the nameplate of the unit, regardless of any derating.

Higher heating value (HHV)—The total heat liberated per mass of fuel burned (Btu per pound), when fuel and dry air at standard conditions undergo complete combustion and all resultant products are brought to their standard States at standard conditions. If certification of the HHV is not provided by the third party fuel supplier, it shall be determined by one of the following test methods: ASTM D2015-85 for solid fuels; ASTM D240-87 or ASTM D2382-88 for liquid hydrocarbon fuels; or ASTM D1826-88 or ASTM D1945-81 in conjunction with ASTM D3588-89 for gaseous fuels. These methods are all incorporated by reference as specified at 40 CFR 52.3002.

Lean-burn engine—Any two- or four-stroke spark-ignited engine that is not a rich-burn engine.

Maintenance operation—The use of an emergency standby engine and fuel system during testing, repair and routine maintenance to verify its readiness for emergency standby use.

Output—The shaft work output from an engine plus the energy reclaimed by any useful heat recovery system.

Peak load—The maximum instantaneous operating load.

Permitted capacity factor—The annual permitted fuel use divided by the manufacturers specified maximum fuel consumption times 8,760 hours per year.

Rich-burn engine—A two- or four-stroke spark-ignited engine where the manufacturers original recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio is less than or equal to 1.1.

Stationary internal combustion engine—Any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than 12 consecutive months. Any engine (or engines) that

replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period. Nonroad engines and engines used solely for competition are not stationary internal combustion engines.

Stoichiometric air/fuel ratio—The air/fuel ratio where all fuel and all oxygen in the air/fuel mixture will be consumed.

Unit—Any diesel, lean-burn, or rich-burn stationary internal combustion engine as defined in this paragraph.

§ 145.103. Standard requirements.

After May 1, 2003, an owner or operator of a unit subject to the standards of this subchapter shall not operate the unit May 1 through September 30 of 2003, and any subsequent year unless the owner or operator complies with the requirements of subparagraph (1) during May 1 through September 30 of each year.

(1) No owner or operator of a stationary internal combustion engine shall cause to be discharged into the atmosphere any gases that contain NO_x in excess of the following applicable limit, expressed as NO_x corrected to 15 percent parts per million by volume (ppmv) stack gas O₂ on a dry basis, averaged over a rolling 30-day period:

(i) Rich-burn, ≥ 2400 bhp: 110 ppmv

(ii) Lean-burn, ≥ 2400 bhp: 125 ppmv

(iii) Diesel, ≥ 3000 bhp: 175 ppmv

(iv) Dual fuel, ≥ 4400 bhp: 125 ppmv

(2) Each emission limit expressed in paragraphs (1)(i) through (iv) may be multiplied by X, where X equals the engine efficiency (E) divided by a reference efficiency of 30 percent. Engine efficiency (E) shall be determined using one of the methods specified in subparagraphs (i) or (ii), whichever provides a higher value. However, engine efficiency (E) shall not be less than 30 percent. An engine with an efficiency lower than 30 percent shall be assigned an efficiency of 30 percent.

(i) $E = (\text{Engine output} \times 100) / (\text{Energy input})$

where energy input is determined by a fuel measuring device accurate to ±5 percent and is based on the higher heating value (HHV) of the fuel. Percent efficiency (E) shall be averaged over 15 consecutive minutes and measured at peak load for the applicable engine.

(ii) $E = (\text{Manufacturers Rated Efficiency [Continuous] at LHV} \times \text{LHV}) / (\text{HHV})$

Where:

LHV = the lower heating value of the fuel; and

HHV = the higher heating value of the fuel

§ 145.104. Compliance determination.

Any owner or operator of a unit subject to the requirements of § 145.103 shall determine compliance using a continuous emissions monitoring system (CEMS) which meets the applicable requirements of Appendices B and F of 40 CFR part 60 and Chapter 139 unless an alternate monitoring technique is approved by the Department under § 145.105(b)(ii).

§ 145.105. Reporting, monitoring, and recordkeeping.

(a) Reporting requirements. Any owner or operator subject to the requirements of § 145.103 shall comply with the following requirements:

(1) By May 1, 2003, submit to the Department the identification number and type of each unit subject to the section, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with the section.

(2) Submit a report documenting for that unit the total NO_x emissions from May 1 through September 30 of each year to the Department by October 31 of each year, beginning in 2003.

(3) Each owner or operator of a unit subject to this rule and operating a CEMS shall submit an excess emissions and monitoring systems performance report, in accordance with the requirements of 40 CFR 60.7(c) and 60.13 and Chapter 139.

(b) Monitoring requirements.

(1) Any owner or operator subject to the requirements of § 145.103 shall not operate such equipment unless it is equipped with one of the following:

(i) A CEMS which meets the applicable requirements of 40 CFR part 60, Subpart A, and Appendix B, and complies with the quality assurance procedures specified in 40 CFR part 60, Appendix F and Chapter 139. The CEMS shall be used to demonstrate compliance with the applicable emission limit.

(ii) An alternate calculational and recordkeeping procedure based upon actual emissions testing and correlations with operating parameters. The installation, implementation and use of such an alternate calculational and recordkeeping

procedure must be approved by the Department in writing prior to implementation.

(2) The CEMS or approved alternate recordkeeping procedure shall be operated and maintained in accordance with an on-site CEMS operating plan approved by the Department.

(c) Recordkeeping requirements. Any owner or operator of a unit subject to this rule shall maintain all records necessary to demonstrate compliance with the section for a period of 5 calendar years at the plant at which the subject unit is located. The records shall be made available to the Department upon request. The owner or operator shall maintain records of the following information for each day the unit is operated:

(1) Identification and location of each engine subject to the requirements of this section.

(2) Calendar date of record.

(3) The number of hours the unit is operated during each day including startups, shutdowns, malfunctions, and the type and duration of maintenance and repairs.

(4) Date and results of each emissions inspection.

(5) A summary of any emissions corrective maintenance taken.

(6) The results of all compliance tests.

(7) If a unit is equipped with a CEMS:

(i) Identification of time periods during which NO_x standards are exceeded, the reason for the exceedance, and action taken to correct the exceedance and to prevent similar future exceedances.

(ii) Identification of the time periods for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

Subchapter C. Emissions of NO_x from Cement Manufacturing.

§ 145.141. Applicability.

The requirements of this subchapter apply only to kilns with process rates of at least the following: long dry kilns - 12 tons per hour (TPH); long wet kilns - 10 TPH; preheater kilns - 16 TPH; precalciner and preheater/precalciner kilns - 22 TPH .

§ 145.142. Definitions.

The terms used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

Clinker—The product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

Department—The Department of Environmental Protection.

Long dry kiln—A kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

Long wet kiln—A kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

Portland cement—A hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

Portland cement kiln—A system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

Preheater kiln—A kiln where the feed to the kiln system is preheated in cyclone chambers and utilize a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

Preheater kiln—A kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

§ 145.143. Standard requirements.

After May 1, 2003, an owner or operator of any Portland cement kiln subject to this rule shall not during May 1 through September 30 emit NO_x in excess of the following when averaged over 30 days:

- (1) Long wet kiln – 6.0 lbs/ton of clinker produced
- (2) Long dry kiln – 5.1 lbs/ton of clinker produced
- (3) Preheater kiln – 3.8 lbs/ton of clinker produced
- (4) Preheater/precalciner or precalciner kiln – 2.8 lbs/ton of clinker produced.

§ 145.144. Reporting, monitoring and recordkeeping.

(a) Reporting requirements. Any owner or operator subject to the requirements of § 145.143 shall comply with the following requirements:

(1) By May 1, 2003, submit to the Department the identification number and type of each unit subject to the section, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with the section.

(2) Submit a report documenting for that unit the total NO_x emissions from May 1 through September 30 of each year to the Department by October 31 of each year, beginning in 2003.

(b) Monitoring Requirements. A unit subject to this rule that is required under Chapter 139 or permit condition to record NO_x emissions data using a continuous emission monitor shall use that data to demonstrate compliance with this subchapter. A unit that does not have a continuous emissions monitor shall use an alternate calculational and recordkeeping procedure based upon actual emissions testing and correlations with operating parameters. The installation, implementation and use of such an alternate calculational and recordkeeping procedure must be approved by the Department in writing prior to implementation.

(c) Recordkeeping Requirements. Any owner or operator of a unit subject to this rule shall produce and maintain records which shall include, but are not limited to:

(1) The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln.

(2) The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment.

(3) The results of any performance testing.

(4) Daily cement kiln production records.

(5) All records required to be produced or maintained shall be retained on site for a minimum of 5 years and be made available to the Department upon request.

**ENVIRONMENTAL QUALITY BOARD
NOTICE OF PUBLIC HEARINGS**

**PROPOSED AMENDMENTS TO PENNSYLVANIA'S
AIR QUALITY REGULATIONS AND THE STATE IMPLEMENTATION PLAN**

Surface Coating Processes and Wood Furniture Manufacturing Operations (RBI #4)

The Environmental Quality Board (EQB) will hold four public hearings to accept comments on the fourth in a series of regulatory proposals implementing changes to Pennsylvania's air resource regulations resulting from the Regulatory Basics Initiative (RBI). The RBI began in August 1995 with the Department of Environmental Protection's (DEP) review of existing regulations to determine those which were more stringent than federal law and regulations, those which lacked clarity, and those which imposed disproportionate costs on the regulated community.

This proposal clarifies existing requirements in Chapter 129.52 for surface coating processes by adding equations necessary for calculating the allowable VOC emission limitations for each surface coating process category. The proposal also revises Table I of Chapter 129 by adding solids-based compliance limits, allows monthly averaging to determine dip tank compliance and provides an exemption for small-quantity coating use, primarily for touch-up and repair. New requirements are added for wood furniture manufacturing operations that emit or have the potential to emit 25 tons per year (tpy) or more of VOCs. These requirements are based on the Environmental Protection Agency's (EPA) Control Techniques Guidelines (CTG) for the industry which were issued in May 1996. The regulation, if approved, will be submitted to the Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Specific comment is requested on two issues: 1) whether to require wood furniture manufacturing facilities with a potential to emit 25 tpy or more of VOCs to comply with both the surface coating requirements and the proposed presumptive reasonably available control technology (RACT) requirements, and 2) whether to adopt the general reporting requirements in 40 CFR Sections 63.7-63.10, which specify timeframes for reporting performance test results, monitoring parameter values, and excess performance test results.

The hearings will be held at 10:00 a.m. as follows:

April 6, 1999	Department of Environmental Protection Southwest Regional Office 400 Waterfront Drive Pittsburgh, Pa.
April 7, 1999	Department of Environmental Protection Southcentral Regional Office Susquehanna River Conference Room 909 Elmerton Avenue Harrisburg, Pa.
April 8, 1999	Department of Environmental Protection Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, Pa.
April 9, 1999	Department of Environmental Protection Northcentral Regional Office 208 W. Third Street Williamsport, Pa.

Refer to the Public Comments section of this notice for information on presenting testimony and submitting comments on this proposal.

April 8, 1999

Department of Environmental Protection
Southeast Regional Office
Suite 6010, Lee Park
555 North Lane
Conshohocken, Pa.

Public Comments

Persons wishing to present testimony at any of the hearings are requested to contact Kate Coleman at the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chair at the hearing. Each organization is limited to designating one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Kate Coleman at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD), to discuss how their needs may be accommodated.

In lieu of or in addition to presenting oral testimony at the hearing, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments on the proposals must be received by May 10, 1999. Comments submitted by facsimile will not be accepted. Electronic comments may be submitted to RegComments@dep.state.pa.us. In addition to written or electronic comments, interested persons may submit summaries of their comments to the EQB. The summaries cannot exceed one page in length and must also be received by May 10, 1999. The one-page summaries will be provided to each member of the EQB in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Copies of the Proposals

Copies of the proposals are available from Vickie Walters, Division of Air Resource Management, Bureau of Air Quality, P.O. Box 8468, Harrisburg, PA 17105-8468, at (717) 787-9495 (e-mail: Walters.Vickie@a1.dep.state.pa.us). These proposals are also available on the DEP Website at <http://www.dep.state.pa.us> (choose Public Participation Center, Proposals Open for Comment).

JAMES M. SEIF
Chairman



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
February 17, 1999

The Secretary

717-787-2814

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown II
Harrisburg, PA 17101

RE: Proposed Rulemaking: Interstate Ozone Transport Reduction Requirements
(NOx SIP Call) (#7-345)

Dear Bob:

Enclosed is a copy of a proposed regulation for review and comment by the Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on March 6, 1999, with a 65-day public comment period. Three public hearings have been scheduled as indicated on the enclosed public notice. This proposal was approved by the Environmental Quality Board (EQB) on February 16, 1999.

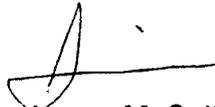
This proposal establishes a program to limit the emission of nitrogen oxides (NOx) from fossil-fired combustion units with rated heat input capacity of 250 mmBtus per hour or more and electric generating facilities of 15 megawatts or greater. It also establishes new ozone season emission limits for cement kilns and stationary internal combustion engines. These provisions are proposed to be contained in new Chapter 145 (relating to Interstate Ozone Transport Reduction). The proposal, which would replace the existing NOx allowance requirements in Chapter 123 beginning in 2003, is necessary to meet Pennsylvania's obligation under EPA's NOx State Implementation Plan (SIP) Call to reduce ozone transport within the state as well as throughout the eastern United States. The deadline for submission of the final rulemaking to EPA is September 30, 1999.

The Air Quality Technical Advisory Committee (AQTAC) reviewed a draft of the proposed rulemaking on December 17, 1998, and recommended that it proceed to the EQB.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Act provides that the Commission may, within ten days after the expiration of the Committee review period, notify the agency of any objections to the proposed regulation. The Department will consider any comments or suggestions received by the Commission, together with Committee and other public comments prior to final adoption.

For additional information, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,

A handwritten signature in black ink, appearing to read 'James M. Seif', with a horizontal line extending to the right.

James M. Seif
Secretary

Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 7-345
SUBJECT: Interstate Ozone Transport Reduction
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

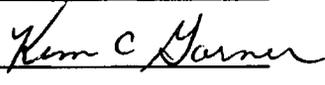
99 FEB 17 PM 12:19

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
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
		HOUSE COMMITTEE ON ENVIRONMENTAL PROTECTION & ENERGY
		SENATE COMMITTEE ON ENVIRONMENTAL PROTECTION & ENERGY
2/17/99		INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL
2/17/99		LEGISLATIVE REFERENCE BUREAU

February 16, 1999