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 **E [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 **E [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.]

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§ 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 (RELATING TO INTERSTATE POLLUTION TRANSPORT REDUCTION).

(b) THE EMISSION LIMITATIONS AND MONITORING REQUIREMENTS ESTABLISHED IN §§ 123.101–123.120 (RELATING TO NO_x ALLOWANCE REQUIREMENTS) **ARE REPLACED BY THE REQUIREMENTS IN CHAPTER 145 (RELATING TO INTERSTATE POLLUTION TRANSPORT REDUCTION) BEGINNING WITH THE MAY 1, 2003 CONTROL PERIOD [EXPIRE ON DECEMBER 31, 2002]**. IF A SOURCE HAS FAILED TO DEMONSTRATE COMPLIANCE WITH § 123.111 (RELATING TO FAILURE TO MEET SOURCE COMPLIANCE REQUIREMENTS), THE PROVISIONS IN § 145.54(d) (RELATING TO COMPLIANCE) 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 (RELATING TO NO_x ALLOWANCE ALLOCATIONS), THE SOURCE WILL BE OBLIGATED TO ACQUIRE AND RETIRE A NUMBER OF NO_x ALLOWANCES AS SPECIFIED IN § 145.54.

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

CHAPTER 145. INTERSTATE POLLUTION TRANSPORT REDUCTION

Subchapter A. NO_x BUDGET TRADING PROGRAM

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GENERAL PROVISIONS

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

Account certificate of representation–The completed and signed submission certifying the designation of an NO_x authorized account representative for an NO_x Budget source or a group of identified NO_x budget sources who is authorized to represent the owners and operators of the sources and of the NO_x budget units at the 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 NO_x under the Acid Rain Program under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7651–7651o).

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

Administrator–The Administrator of the EPA or the Administrator's 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.

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.A. §§ 7401—7642).**

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

(i) Flow monitor.

(ii) NO_x pollutant concentration monitors.

(iii) Diluent gas monitor (O_2 or CO_2) **[when the monitoring is required by this subchapter]**.

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

(v) A DAHS.

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.

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

PROCESS), for a unit that is a NO_x budget unit under § 145.4 (relating to applicability) on the date the unit commences commercial operation, the date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed or repowered.

(ii) Except as provided in **§§ 145.4(b),** 145.5 or §§ 145.80–145.88 (relating to opt-in process), 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 is 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.

(i) Except as provided in **§§ 145.4(b),** 145.5 **OR §§ 145.80-145.88**, for a unit that is a NO_x budget unit under § 145.4 on the date of commencement of operation, the date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed or repowered.

(ii) Except as provided in **§§ 145.4(b) (RELATING TO APPLICABILITY),** 145.5 or §§ 145.80– 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 account–A NO_x Allowance Tracking System account for an 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.

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.

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

DAHS–Automated data acquisition and handling system–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.

ELECTRICITY FOR SALE UNDER FIRM CONTRACT TO THE ELECTRIC GRID—

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

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

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

Excess emissions–Any tonnage of NO_x 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, ONE OF THE FOLLOWING:**

(i) FOR UNITS THAT COMMENCED OPERATION BEFORE JANUARY 1, 1996, THE COMBINATION 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 1995, OR, IF A UNIT HAD NO HEAT INPUT IN 1995, DURING THE LAST YEAR OF OPERATION OF THE UNIT PRIOR TO 1995.

(ii) FOR UNITS THAT COMMENCED OPERATION ON OR AFTER JANUARY 1, 1996 AND BEFORE JANUARY 1, 1997, THE COMBINATION 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 1996.

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

(A) THE COMBINATION 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; OR

(B) THE COMBINATION 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.

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

(i) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% 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.

(ii) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50% 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 the 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) **DIVIDED BY 1,000,000 BTU** and **MULTIPLIED BY** 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.

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

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 the unit's total costs, pursuant to a contract for one of the following:

(i) The life of the unit.

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

(iii) A period equal to or greater than 25 years or 70% 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 **(IN MMBTU/HR)** 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 **(IN MMBTU/HR)** used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use 40 CFR Part 75 Appendix D (relating to optional SO_2 emissions data **PROTOCOL [protocal]** for gas) to report heat input, this value shall 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 shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in % CO_2) or the minimum oxygen concentration (in % O_2).

Maximum potential NO_x emission rate–The emission rate of NO_x (in lb/mmBtu) calculated in accordance with 40 CFR Part 75 Appendix F, Section 3 (relating to procedure for NO_x emission rate), using the maximum potential NO_x concentration as defined in 40 CFR Part 75 Appendix A, Section 2 (relating to equipment specifications), and either the maximum O_2 concentration (in % O_2) or the minimum **CARBON DIOXIDE** concentration (in % CO_2).

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–A monitoring system that meets the requirements of this subchapter, including a CEMS, 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.

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

NO_x allowance–An authorization by the Department under the NO_x Budget Trading Program to emit up to 1 ton of NO_x during the control period of the specified year or of any year thereafter**,**

EXCEPT AS PROVIDED UNDER § 145.54(f) (RELATING TO COMPLIANCE). NO PROVISION OF THE NO_x BUDGET TRADING PROGRAM, ANY PERMIT, OR AN EXEMPTION UNDER § 145.4(b) OR § 145.5 AND NO PROVISION OF LAW SHALL

BE CONSTRUED TO LIMIT THE AUTHORITY OF THE DEPARTMENT OR THE ADMINISTRATOR TO TERMINATE OR LIMIT SUCH AUTHORIZATION, WHICH DOES NOT CONSTITUTE A PROPERTY RIGHT. FOR PURPOSES OF ALL SECTIONS OF THIS SUBCHAPTER EXCEPT §§ 145.41, 145.42, 145.43 OR 145.88, NO_x ALLOWANCE ALSO INCLUDES AN AUTHORIZATION TO EMIT UP TO ONE TON OF NITROGEN OXIDES DURING THE CONTROL PERIOD OF THE SPECIFIED YEAR OR OF ANY YEAR THEREAFTER BY THE DEPARTMENT OR THE ADMINISTRATOR.

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**, IN ACCORDANCE WITH** 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 the deadline.

NO_x authorized account representative–For an 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 **THIS SUBCHAPTER**, 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 TO ADMINISTER THE NO_x BUDGET TRADING PROGRAM. THIS PERSON MAY BE THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.**

NO_x budget emissions limitation–For an 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)**, (e), AND (f)** (relating to compliance), adjusted by any deductions of the

NO_x allowances to account for actual **HEAT INPUT [utilization]** under § 145.42(e) (relating to NO_x allowance allocations) 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 **TRADING** Program, or for a change in regulatory status, for a NO_x budget opt-in source under § 145.86 or § 145.87 (relating to opt-in source withdrawal from NO_x budget **TRADING [training]** program; and opt-in source change in regulatory status).

[*NO_x budget opt-in permit*–An NO_x budget permit covering an 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 **APPROVAL [permit]** has been issued and is in effect under this subchapter **[and Chapter 127 (relating to construction, modification, reactivation and operation of sources)]**.

[*NO_x budget permit*–The legally binding and Federally enforceable written document, or portion of the 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 NO_x air pollution control and emission reduction program established in accordance with this subchapter, as a means of mitigating the interstate transport of ozone and NO_x, 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 (relating to **[information requirements for NO_x budget permit applications; and]** application for opt-in sources), 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 **OPT-IN APPROVAL [permit]** under § 145.83 (relating to applying for NO_x budget opt-in **APPROVAL [permit]**). **THE UNIT'S DOCUMENTED HEAT INPUT WILL BE DETERMINED IN ACCORDANCE WITH 40 CFR PART 75 IF THE UNIT WAS OTHERWISE SUBJECT TO THE REQUIREMENTS OF 40 CFR PART 75 DURING THAT 6-MONTH PERIOD OR WILL BE BASED ON THE BEST AVAILABLE DATA REPORTED TO THE ADMINISTRATOR FOR THE UNIT IF THE UNIT WAS NOT OTHERWISE SUBJECT TO THE REQUIREMENTS OF 40 CFR PART 75 DURING THAT 6-MONTH PERIOD.**

Operator–A person who operates, controls or supervises an NO_x budget unit, an NO_x budget source or unit for which an application for an NO_x budget opt-in **APPROVAL [permit]** under § **145.83 [145.84]** is submitted and not denied or withdrawn and shall include, but not be limited to, a holding company, utility system or plant manager of such a unit or source.

Opt-in–To elect to become an NO_x budget unit under the NO_x Budget Trading Program through a final, effective NO_x budget **OPT-IN APPROVAL [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:

(i) A 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 **APPROVAL [permit]** under § 145.83 is submitted and not denied or withdrawn.

(ii) A holder of a leasehold interest in an NO_x budget unit or in a unit for which an application for a NO_x budget opt-in **APPROVAL [permit]** under § 145.83 is submitted and not denied or withdrawn.

(iii) A purchaser of power from an NO_x budget unit or from a unit for which an application for a NO_x budget opt-in **APPROVAL [permit]** under § 145.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, an owner may not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the

revenues or income from the NO_x budget unit or the unit for which an application for a NO_x budget opt-in **APPROVAL [permit]** under § 145.83 is submitted and not denied or withdrawn.

(iv) With respect to any general account, a 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.

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

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

Receive or *receipt of*–When referring to the Department, the Administrator or the 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–A direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60, Appendix A (relating to specifications and test).

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 Clean Air Act. For purposes of section 502(c) of the Clean Air Act (42 U.S.C.A. § 7661a(c)), a source, including a source with multiple units, shall be considered a single facility.

State–One of the 48 contiguous states and the District of Columbia that adopts an NO_x Budget Trading Program **[under this subchapter]**. The term shall have its conventional meaning where the 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 **SPECIFIED IN ACCORDANCE WITH THE APPLICABLE REGULATION** by one of the following methods:

(i) In person.

(ii) By United States Postal Service.

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

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

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

Ton or tonnage–Any "short ton" (that is, 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 1 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 (that is, 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 one of the following:

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

(ii) 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 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 **SUBCHAPTER [part]** are defined as follows:

Btu–British thermal unit.

hr–hour.

***Kw*—KILOWATT ELECTRICAL.**

Kwh–kilowatt hour.

lb–pounds.

mmBtu–million Btu.

MWe–megawatt electrical.

ton–2,000 pounds.

CO_2–carbon dioxide.

NO_x–nitrogen oxides.

O_2–oxygen.

§ 145.4. Applicability.

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

(1) ELECTRIC GENERATING UNITS.

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

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

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

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

(2) NON-ELECTRIC GENERATING UNITS.

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

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

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

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

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

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

(2) A 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.]

(b) 25-TON EXEMPTION.

(1) NOTWITHSTANDING SUBSECTION (a), A UNIT UNDER PARAGRAPH (a)(1) OR (a)(2) THAT HAS A FEDERALLY ENFORCEABLE PERMIT THAT INCLUDES A NO_x EMISSION LIMITATION RESTRICTING NO_x EMISSIONS DURING A CONTROL PERIOD TO 25 TONS OR LESS AND THAT INCLUDES THE SPECIAL PROVISIONS IN PARAGRAPH (b)(4) SHALL BE EXEMPT FROM THE REQUIREMENTS OF THE NO_x BUDGET TRADING PROGRAM, EXCEPT FOR THE PROVISIONS OF THIS PARAGRAPH AND §§ 145.2, 145.3, 145.4(a), 145.7, 145.40 THROUGH 145.62. THE NO_x EMISSION LIMITATION UNDER THIS PARAGRAPH SHALL RESTRICT NO_x EMISSIONS DURING THE CONTROL PERIOD BY LIMITING UNIT OPERATING HOURS OR HEAT INPUT. THE RESTRICTION ON UNIT OPERATING HOURS SHALL BE CALCULATED BY DIVIDING THE PERMIT RESTRICTION TONNAGE BY THE UNIT'S MAXIMUM POTENTIAL HOURLY NO_x MASS EMISSIONS, WHICH SHALL EQUAL THE UNIT'S MAXIMUM RATED HOURLY HEAT INPUT MULTIPLIED BY THE HIGHEST DEFAULT NO_x EMISSION RATE OTHERWISE APPLICABLE TO THE UNIT UNDER 40 CFR § 75.19. THE RESTRICTION ON HEAT INPUT SHALL BE CALCULATED BY DIVIDING

THE PERMIT RESTRICTION TONNAGE BY THE UNIT'S HIGHEST DEFAULT NO_x EMISSION RATE OTHERWISE APPLICABLE TO THE UNIT UNDER 40 CFR § 75.19

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

(i) THE EXEMPTION SHALL BECOME EFFECTIVE ON THE DATE ON WHICH THE NO_x EMISSION LIMITATION AND THE SPECIAL PROVISIONS IN THE PERMIT UNDER PARAGRAPH (b)(1) BECOME FINAL; OR

(ii) IF THE NO_x EMISSION LIMITATION AND THE SPECIAL PROVISIONS IN THE PERMIT UNDER PARAGRAPH (b)(1) BECOME FINAL DURING A CONTROL PERIOD AND AFTER THE FIRST DATE ON WHICH THE UNIT OPERATES DURING SUCH CONTROL PERIOD, THEN THE EXEMPTION SHALL BECOME EFFECTIVE ON MAY 1 OF SUCH CONTROL PERIOD, PROVIDED THAT SUCH NO_x EMISSION LIMITATION AND THE SPECIAL PROVISIONS APPLY TO THE UNIT AS OF SUCH FIRST DATE OF OPERATION. IF SUCH NO_x EMISSION LIMITATION AND SPECIAL PROVISIONS DO NOT APPLY TO THE UNIT AS OF SUCH FIRST DATE OF OPERATION, THEN THE EXEMPTION UNDER PARAGRAPH (b)(1) SHALL BECOME

EFFECTIVE ON OCTOBER 1 OF THE YEAR DURING WHICH SUCH NO_x EMISSION LIMITATION AND THE SPECIAL PROVISIONS BECOME FINAL.

(3) THE DEPARTMENT WILL PROVIDE NOTICE TO THE NO_x BUDGET ADMINISTRATOR OF THE ISSUANCE OF SUCH PERMIT AND, UPON REQUEST, A COPY OF THE PERMIT.

(4) SPECIAL PROVISIONS.

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

(ii) THE DEPARTMENT WILL ALLOCATE NO_x ALLOWANCES TO THE UNIT UNDER §§ 145.41(a) THROUGH (c) AND 145.42 (a) THROUGH (c). FOR EACH CONTROL PERIOD FOR WHICH THE UNIT IS ALLOCATED NO_x ALLOWANCES UNDER §§ 145.41(a) THROUGH (c) AND 145.42 (a) THROUGH (c) THE FOLLOWING MUST OCCUR:

(A) THE OWNERS AND OPERATORS OF THE UNIT MUST SPECIFY A GENERAL ACCOUNT, IN WHICH THE NO_x BUDGET ADMINISTRATOR WILL RECORD THE NO_x ALLOWANCES.

(B) AFTER THE NO_x BUDGET ADMINISTRATOR RECORDS NO_x ALLOWANCES UNDER §§ 145.41 (a) THROUGH (c) AND 145.42 (a) THROUGH (c), THE NO_x BUDGET ADMINISTRATOR WILL DEDUCT, FROM THE GENERAL ACCOUNT SPECIFIED IN CLAUSE (A), NO_x ALLOWANCES THAT ARE ALLOCATED FOR THE SAME OR A PRIOR CONTROL PERIOD AS THE NO_x ALLOWANCES ALLOCATED TO THE UNIT UNDER §§ 145.41(a) THROUGH (c) AND 145.42 (a) THROUGH (c) AND THAT EQUAL THE NO_x EMISISON LIMITATION (IN TONS OF NO_x) ON WHICH THE UNIT'S EXEMPTION UNDER PARAGRAPH (b)(1) IS BASED. THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE SHALL ENSURE THAT SUCH GENERAL ACCOUNT CONTAINS THE NO_x ALLOWANCES NECESSARY FOR COMPLETION OF SUCH DEDUCTION.

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

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

(iv) FOR A PERIOD OF 5 YEARS FROM THE DATE THE RECORDS ARE CREATED, THE OWNERS AND OPERATORS OF A UNIT EXEMPT UNDER PARAGRAPH (b)(1) SHALL RETAIN RECORDS DEMONSTRATING THAT THE CONDITIONS OF THE FEDERALLY ENFORCEABLE PERMIT UNDER PARAGRAPH (b)(1) WERE MET, INCLUDING THE RESTRICTION ON UNIT OPERATING HOURS. 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 ADMINISTRATOR. THE OWNERS AND OPERATORS BEAR THE BURDEN OF PROOF THAT THE UNIT MET THE RESTRICTION ON UNIT OPERATING HOURS.

(v) THE OWNERS AND OPERATORS AND, TO THE EXTENT APPLICABLE, THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE OF A UNIT EXEMPT UNDER PARAGRAPH (b)(1) 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.

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

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

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

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

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

(viii) A UNIT THAT IS EXEMPT UNDER PARAGRAPH (b)(1) IS NOT ELIGIBLE TO BE A NO_x BUDGET OPT-IN UNIT UNDER §§ 145.80 THROUGH 145.88.

§ 145.5. Retired unit exemption.

(a) *Application.* This section applies to an NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired.

(b) *Requirements.*

(1) An NO_x budget unit, other than an NO_x budget opt-in source, that is permanently retired is exempt from the NO_x Budget Trading Program, except for the provisions of this section, §§ 145.2, 145.3, 145.4, 145.6, 145.7 and §§ 145.40–145.62.

(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 subsection (c).

(3) After receipt of the notice under paragraph (2), the Department will amend any permit **ISSUED BY THE DEPARTMENT** 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 may not emit NO_x, starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with §§ 145.40–145.42 (relating to NO_x allowance allocations).

(2) A unit exempt under this section may not resume operation unless **AUTHORIZED BY THE DEPARTMENT. THE [the]** NO_x authorized account representative of the source **SHALL SUBMIT A RESTART REQUEST TO THE DEPARTMENT [submits a complete NO_x budget permit application under § 145.22 (relating to information requirements for NO_x budget permit applications)]** for the unit at least 18 months prior to the date on which the unit is to first resume operation. **THE RESTART REQUEST SHALL, AT A MINIMUM, CONTAIN THE FOLLOWING:**

(i) IDENTIFICATION OF THE NO_X BUDGET SOURCE, INCLUDING THE PLANT NAME AND THE ORIS (OFFICE OF REGULATORY INFORMATION SYSTEMS) OR FACILITY CODE ASSIGNED TO THE SOURCE BY THE ENERGY INFORMATION ADMINISTRATION, IF APPLICABLE.

(ii) IDENTIFICATION OF EACH NO_X BUDGET UNIT AT THE NO_X BUDGET SOURCE AND WHETHER IT IS AN NO_X BUDGET UNIT UNDER § 145.4 OR §§ 145.80–145.88 (RELATING TO OPT-IN PROCESS).

(3) The owners and operators and, to the extent applicable, the NO_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 the requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit that is exempt under this section is not eligible to be a NO_x budget opt-in source under §§ 145.80–145.88 (relating to opt-in process).

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

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 an exemption will be as follows:

(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 **RESTART [NO_x budget permit]** application under paragraph (2).

(B) The date on which the NO_x authorized account representative is required under paragraph (2) to submit a **RESTART [NO_x budget permit]** application.

(ii) For the purpose of applying monitoring requirements under §§ 145.70–145.76 (relating to recordkeeping and reporting requirements), 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) (relating to NO_x budget permit applications).

(ii) Submit supplemental information that the Department determines is necessary to review an NO_x budget permit application and issue or deny an 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 an NO_x budget permit issued by the Department and operate the unit in compliance with the NO_x budget permit.]

(a) [(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 §§ 145.70–145.76 (relating to recordkeeping and recording requirements).

(2) The emissions measurements recorded and reported in accordance with §§ 145.70–145.76 shall be used to determine compliance by the unit with the NO_x budget emissions limitation under subsection (c).

(b) [(c)] *NO_x 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 (relating to compliance), 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 §§ 145.70–145.76, plus any amount necessary to account for actual **HEAT INPUT [utilization]** under **§** 145.42(e) (relating to NO_x allowance allocation) for the control period **OR TO ACCOUNT FOR EXCESS EMISSIONS FOR A PRIOR CONTROL PERIOD UNDER § 145.54(d) OR TO ACCOUNT FOR WITHDRAWAL FROM THE NO_x BUDGET TRADING PROGRAM, OR A CHANGE IN REGULATORY STATUS, OF A NO_x BUDGET OPT-IN UNIT UNDER § 145.89 OR § 145.87.**

(2) Each ton of NO_x emitted in excess of the NO_x budget emissions limitation shall constitute a separate violation of this subchapter and the act.

(3) An 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 §§ 145.40–145.62 and 145.80–145.88.

(5) An NO_x allowance may not be deducted, to comply with paragraph (1), for a control period in a year prior to the year for which the NO_x allowance was allocated.

(6) An NO_x allowance allocated by the Department under the NO_x Budget Trading Program is a limited authorization to emit 1 ton of NO_x 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 **§§ 145.4(b) OR** 145.5 (relating to **APPLICABILITY AND** retired unit exemption) and no provision of law limit the authority of the United States or the Department to terminate or limit the authorization.

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

(c) [(d)] *Excess emissions.* The owners and operators of an NO_x budget unit that has excess emissions in any control period shall do the following:

(1) Surrender the NO_x allowances required for deduction under § 145.54(d)(1) (relating to

compliance).

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

(d) [(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 **MAINTAIN AT A CENTRAL LOCATION AND PROVIDE UPON REQUEST BY THE DEPARTMENT OR THE NO_x BUDGET ADMINISTRATOR [keep on site at the source each of]** the following documents for 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 (relating to account certificate of representation). The certificate and documents shall be retained **[on site at the source]** beyond the 5-year period until the documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

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

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

(iv) Copies of the 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 145.70–145.88.

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

(1) A permit revision may not 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 the 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 the unit. **EXCEPT WITH REGARD TO THE REQUIREMENTS APPLICABLE TO UNITS WITH A COMMON STACK UNDER §§ 145.70—145.76 (RELATING TO RECORDKEEPING AND REPORTING REQUIREMENTS), THE OWNERS AND OPERATORS AND THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE OF ONE NO_x BUDGET UNIT SHALL NOT BE LIABLE FOR ANY VIOLATION BY ANY OTHER NO_x BUDGET UNIT OF WHICH THEY ARE NOT OWNERS OR OPERATORS OR THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE AND THAT IS LOCATED AT A SOURCE OF WHICH THEY ARE NOT OWNERS OR OPERATORS OR THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE.**

(f) [(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 **§§ 145.4(b) OR** 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 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 State or Federal holiday, the time period shall be extended to the next business day.

NO_x ACCOUNT

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

(a) Except as provided under § 145.11 (relating to alternate NO_x authorized account representative), 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 (relating to account certificate of representation), the NO_x authorized account representative of the source shall represent and, by his 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, not withstanding any agreement between the NO_x authorized account representative and the 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) A **[NO_x budget permit will not be issued, and an]** NO_x Allowance Tracking System account will not 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 an NO_x authorized account representative of the source and the NO_x budget units at

the source.

(e) Document submission requirements are as follows:

(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 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 an NO_x budget source or an 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 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 (relating to account certificate of representation), 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 **SUBCHAPTER [part]**, the term shall 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

(relating to account certificate of representation). Notwithstanding a change, the 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 a change, the 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) If a new owner or operator of an NO_x budget source or an NO_x budget unit is not included in the list of owners and operators submitted in the account certificate of representation, the 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 the list.

(2) Within 30 days following any change in the owners and operators of an 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 an 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 may not be submitted to the Department or Administrator. The Department and Administrator are not under any obligation to review or evaluate the sufficiency of these documents, if submitted.

§ 145.14. Objections concerning the NO_x authorized account representative.

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

(b) Except as provided in § 145.12(a) or (b) (relating to changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in the owners and operators), an 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 will not affect any representation, action, inaction or submission of the NO_x authorized account representative or the finality of a 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 an NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

[PERMIT REQUIREMENTS]

[§ 145.20. General NO_x Budget Trading Program permit requirements.]

[(a) Each NO_x budget source shall have an 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 (relating to Title V operating permits).

(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 (relating to general; plan approval requirements; and operating permit requirements).

(b) Each NO_x budget permit shall include applicable NO_x Budget Trading Program requirements and shall be a complete and segregable portion of the permit under subsection (a).]

[§ 145.21. NO_x budget permit applications.]

[(a) *Submission of application.* The NO_x authorized account representative of an NO_x budget source shall submit to the Department a complete NO_x budget permit application under § 145.22 (relating to information requirements for NO_x budget permit applications) by the applicable deadline in subsection (b).

(b) *NO_x budget permits.*

(1) For any source, with one or more NO_x budget units under § 145.4 (relating to applicability) 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 (relating to operating permit requirements; Title V operating requirements) covering the NO_x budget units to the Department by ____ (*Editor's Note:* The blank refers to a date 6 months after the effective date of adoption of this proposed rulemaking).

(2) For any source, with an NO_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 (relating to construction, modification, reactivation and operation of sources) covering the NO_x budget unit to the Department as provided for in Chapter 127, Subchapters B, D or E (relating to plan approval requirements; prevention of significant deterioration of air quality; and new source review), whichever is applicable.]

[§ 145.22. Information requirements for NO_x budget permit applications.]

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

reactivation and operation of sources), 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 the plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable.

(2) Identification of each NO_x budget unit at the NO_x budget source and whether it is an NO_x budget unit under § 145.4 or §§ 145.80–145.88 (relating to opt-in process).

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

(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 §§ 145.80–145.88 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 §§ 145.80–145.88 is currently operating, as that term is defined under § 145.2.'']

[§ 145.23. NO_x budget permit contents.]

[(a) In addition to the requirements in Chapter 127 (relating to construction, modification, reactivation and operation of sources), an NO_x budget permit will contain, in a format prescribed by the Department, the elements required for a complete NO_x budget permit application under § 145.22 (relating to information requirements for NO_x budget permit applications).

(b) An 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 an NO_x budget unit for which a complete NO_x budget permit application is timely submitted under § 145.21(b) (relating to NO_x budget permit applications) 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 (relating to construction, modification, reactivation and operation of sources).]

COMPLIANCE CERTIFICATION

§ 145.30. Compliance certification report.

(a) *Applicability and deadline.* **[In addition to the requirements of § 127.513 (relating to compliance certification), for]** **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 of the 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 **DEPARTMENT** **[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 (relating to recordation of NO_x allowance allocations) 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 §§ 145.70–145.76 (relating to recordkeeping and reporting requirements), the percentage of allowances that is to be deducted from each unit's compliance account under § 145.54(e) (relating to compliance).

(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 the following:

(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 the information necessary to attribute NO_x emissions to the unit, in accordance with §§ 145.70–145.76.

(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 §§ 145.70–145.76. 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 §§ 145.70–145.76 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 §§ 145.70–145.76, if any, has changed.

(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 § 127.12a(k) (relating to compliance review).]

§ 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).

NO_x ALLOWANCE ALLOCATIONS

§ 145.40. State trading program budget.

(a) IN ACCORDANCE WITH §§ 145.41 AND 145.42 (RELATING TO TIMING REQUIREMENTS FOR NO_X ALLOWANCE ALLOCATIONS AND NO_X ALLOWANCE ALLOCATIONS), THE DEPARTMENT WILL ALLOCATE TO NO_x BUDGET UNITS UNDER § 145.4(a) (RELATING TO APPLICABILITY), FOR EACH CONTROL PERIOD SPECIFIED IN § 145.41, A TOTAL NUMBER OF NO_x ALLOWANCES LESS THE SUM OF THE NO_x EMISSION LIMITATIONS (IN TONS) FOR EACH UNIT EXEMPT UNDER S 145.4(b) THAT IS NOT ALLOCATED ALLOWANCES UNDER § 145.42(b) OR (c) FOR THE CONTROL PERIOD AND WHOSE NO_x EMISSION LIMITATION (IN TONS OF NO_x) IS NOT INCLUDED IN THE AMOUNT

CALCULATED UNDER § 145.42(d)(5)(ii)(B). THE PENNSYLVANIA NO_x TRADING PROGRAM BUDGET IS AS FOLLOWS: [The trading program budget allocated by the Department under § 145.42 (relating to NO_x allowance allocations) 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 (relating to applicability) in this Commonwealth for the control period, as follows:]

(1) The NO_x budget for electric generating units under this subchapter is **47,224 [52,000]** tons per season.

(2) The NO_x budget for nonelectric generating units under this subchapter is **3,619 [5,600]** tons per season.

(b) [(3)] The NO_x budget may be adjusted as provided in § **[§ 145.55(c)(10), 145.80–145.88 and]** 145.90 (**[relating to banking; opt-in process; and]** emission reduction credit provisions).

§ 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 (relating to NO_x allowance allocations), for the control periods in 2003 **THROUGH 2007 [, 2004 and 2005].**

(b) BY APRIL 1, 2005, THE DEPARTMENT WILL PUBLISH THE NO_x ALLOWANCE ALLOCATIONS IN THE PENNSYLVANIA BULLETIN, IN ACCORDANCE WITH §§ 145.42(a) THROUGH (c), FOR THE CONTROL PERIODS 2008 THROUGH 2012.

(c) BY APRIL 1, 2010, BY APRIL 1 OF 2015, AND THEREAFTER BY APRIL 1 OF THE YEAR THAT IS 5 YEARS AFTER THE LAST YEAR FOR WHICH NO_x ALLOWANCES ALLOCATIONS ARE DETERMINED, THE DEPARTMENT WILL PUBLISH THE NO_x ALLOWANCE ALLOCATIONS IN THE PENNSYLVANIA BULLETIN, IN ACCORDANCE WITH §§ 145.42(a) THROUGH (c), FOR THE CONTROL PERIODS IN THE YEARS THAT ARE 3, 4, 5, 6, AND 7 YEARS AFTER THE APPLICABLE DEADLINE UNDER THIS SUBSECTION.

(d) BY APRIL 1, 2003 AND APRIL 1 OF EACH YEAR THEREAFTER, THE DEPARTMENT WILL PUBLISH THE NO_x ALLOWANCE ALLOCATIONS IN THE PENNSYLVANIA BULLETIN, IN ACCORDANCE WITH § 145.42(d), FOR THE CONTROL PERIOD IN THE YEAR OF THE APPLICABLE DEADLINE UNDER THIS SUBSECTION.

[(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 3 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, 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 NO_x allowances remaining in the allocation set-aside for the prior control period.]

§ 145.42. NO_x allowance allocations.

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

(1) The heat input (in mmBtu) used for calculating NO_x allowance allocations for each NO_x budget unit under § 145.4 (relating to applicability) will be as follows:

(i) FOR A NO_x ALLOWANCE ALLOCATION UNDER § 145.41(a).

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

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

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

(ii) FOR A NO_x ALLOWANCE ALLOCATION UNDER § 145.41(b), THE UNIT'S AVERAGE HEAT INPUT FOR THE CONTROL PERIODS IN 2002 THROUGH 2004.

(iii) FOR A NO_x ALLOWANCE ALLOCATION UNDER § 145.41(c), THE UNIT'S AVERAGE HEAT INPUT FOR THE CONTROL PERIOD IN THE YEARS THAT ARE 4, 5, 6, 7, AND 8 YEARS BEFORE THE FIRST YEAR FOR WHICH THE ALLOCATION IS BEING CALCULATED.

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

(i) FOR A NO_x ALLOWANCE ALLOCATION UNDER § 145.41(a), SUCH HEAT INPUT WILL BE DETERMINED USING THE BEST AVAILABLE DATA REPORTED TO THE ADMINISTRATOR FOR THE UNIT IF THE

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

(ii) FOR A NO_x ALLOWANCE ALLOCATION UNDER § 145.41(b) OR (c) FOR A UNIT EXEMPT UNDER § 145.4(b), SUCH HEAT INPUT SHALL BE TREATED AS ZERO IF THE UNIT IS EXEMPT UNDER § 145.4(b) DURING THE CONTROL PERIOD.

(b) FOR EACH GROUP OF FIVE CONTROL PERIODS SPECIFIED IN §§ 145.41(a) THROUGH (c), THE DEPARTMENT WILL ALLOCATE TO ALL NO_x BUDGET UNITS IN A GIVEN STATE UNDER § 145.4(a)(1) THAT COMMENCED OPERATION BEFORE MAY 1, 1997 FOR ALLOCATIONS UNDER § 145.41(a), MAY 1, 2003 FOR ALLOCATIONS UNDER § 145.41(b), AND MAY 1 OF THE YEAR 5 YEARS BEFORE THE FIRST YEAR FOR WHICH THE ALLOCATION UNDER § 145.41(c) IS BEING CALCULATED, A TOTAL NUMBER OF NO_x ALLOWANCES EQUAL TO 95 PERCENT OF THE PORTION OF THE STATE'S TRADING PROGRAM BUDGET UNDER § 145.40 COVERING SUCH UNITS. THE DEPARTMENT WILL ALLOCATE IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

(1) THE DEPARTMENT WILL ALLOCATE NO_x ALLOWANCES TO EACH NO_x BUDGET UNIT UNDER § 145.4(a)(1) FOR EACH CONTROL PERIOD IN AN AMOUNT EQUALING 0.15 LB/MMBTU MULTIPLIED BY THE HEAT INPUT DETERMINED UNDER PARAGRAPH (a) OF THIS SECTION, DIVIDED

BY 2,000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(2) IF THE INITIAL TOTAL NUMBER OF NO_x ALLOWANCES ALLOCATED TO ALL NO_x BUDGET UNITS UNDER § 145.4(a)(1) IN THE STATE FOR A CONTROL PERIOD UNDER PARAGRAPH (b)(1) OF THIS SECTION DOES NOT EQUAL 95 PERCENT OF THE PORTION OF THE STATE'S TRADING PROGRAM BUDGET UNDER § 145.40 COVERING SUCH 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 (b)(1) OF THIS SECTION SO THAT THE TOTAL NUMBER OF NO_x ALLOWANCES ALLOCATED EQUALS 95 PERCENT OF SUCH PORTION OF THE STATE'S TRADING PROGRAM BUDGET. THIS ADJUSTMENT WILL BE MADE BY MULTIPLYING EACH UNIT'S ALLOCATION BY 95 PERCENT OF SUCH PORTION OF THE STATE'S TRADING PROGRAM BUDGET; DIVIDING BY THE TOTAL NUMBER OF NO_x ALLOWANCES ALLOCATED UNDER PARAGRAPH (b)(1) OF THIS SECTION FOR THE CONTROL PERIOD; AND ROUNDING TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(c) FOR EACH GROUP OF FIVE CONTROL PERIODS SPECIFIED IN §§ 145.41(a) THROUGH (c), THE DEPARTMENT WILL ALLOCATE TO ALL NO_x BUDGET UNITS IN A GIVEN STATE UNDER § 145.4(a)(2) THAT COMMENCED OPERATION

BEFORE MAY 1, 1997 FOR ALLOCATIONS UNDER § 145.41(a), MAY 1, 2003 FOR ALLOCATIONS UNDER § 145.41(b), AND MAY 1 OF THE YEAR 5 YEARS BEFORE THE FIRST YEAR FOR WHICH THE ALLOCATION UNDER § 145.41(c) IS BEING CALCULATED, A TOTAL NUMBER OF NO_x ALLOWANCES EQUAL TO 95 PERCENT OF THE PORTION OF THE STATE'S TRADING PROGRAM BUDGET UNDER § 145.40 COVERING SUCH UNITS. THE DEPARTMENT WILL ALLOCATE IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

(1) THE DEPARTMENT WILL ALLOCATE NO_x ALLOWANCES TO EACH NO_x BUDGET UNIT UNDER §145.4(a)(2) FOR EACH CONTROL PERIOD IN AN AMOUNT EQUALING 0.17 LB/MMBTU MULTIPLIED BY THE HEAT INPUT DETERMINED UNDER SUBSECTION (a) OF THIS SECTION, DIVIDED BY 2,000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(2) IF THE INITIAL TOTAL NUMBER OF NO_x ALLOWANCES ALLOCATED TO ALL NO_x BUDGET UNITS UNDER §145.4(a)(2) IN THE STATE FOR A CONTROL PERIOD UNDER PARAGRAPH (c)(1) OF THIS SECTION DOES NOT EQUAL 95 PERCENT OF THE PORTION OF THE STATE'S TRADING PROGRAM BUDGET UNDER § 145.40 COVERING SUCH UNITS, THE ADMINISTRATOR WILL ADJUST THE TOTAL NUMBER OF NO_x ALLOWANCES ALLOCATED TO ALL SUCH NO_x BUDGET UNITS FOR THE CONTROL PERIOD UNDER PARAGRAPH (a)(1) OF THIS SECTION SO THAT

THE TOTAL NUMBER OF NO_x ALLOWANCES ALLOCATED EQUALS 95 PERCENT OF THE PORTION OF THE STATE'S TRADING PROGRAM BUDGET UNDER § 145.40 COVERING SUCH UNITS. THIS ADJUSTMENT WILL BE MADE BY MULTIPLYING EACH UNIT'S ALLOCATION BY 95 PERCENT OF THE PORTION OF THE STATE'S TRADING PROGRAM BUDGET UNDER § 145.40 COVERING SUCH UNITS; DIVIDING BY THE TOTAL NUMBER OF NO_x ALLOWANCES ALLOCATED UNDER PARAGRAPH (c)(1) OF THIS SECTION FOR THE CONTROL PERIOD; AND ROUNDING TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(d) FOR EACH CONTROL PERIOD SPECIFIED IN § 145.41(d), THE DEPARTMENT WILL ALLOCATE NO_x ALLOWANCES TO NO_x BUDGET UNITS IN A GIVEN STATE UNDER § 145.4(a) (EXCEPT FOR UNITS EXEMPT UNDER § 145.4(b)) THAT COMMENCE OPERATION, OR ARE PROJECTED TO COMMENCE OPERATION, ON OR AFTER MAY 1, 1997 (FOR CONTROL PERIODS UNDER § 145.41(a)); MAY 1, 2003, (FOR CONTROL PERIODS UNDER § 145.41(b)); AND MAY 1 OF THE YEAR 5 YEARS BEFORE THE BEGINNING OF THE GROUP OF 5 YEARS THAT INCLUDES THE CONTROL PERIOD (FOR CONTROL PERIODS UNDER § 145.41(c)). THE DEPARTMENT MAY ALSO USE THIS SET-ASIDE TO ADDRESS ALLOCATION REVISIONS TO UNITS UNDER SUBSECTIONS (a) THROUGH (c). THE DEPARTMENT WILL MAKE THE ALLOCATIONS UNDER THIS SUBSECTION (d) IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

(1) THE DEPARTMENT WILL ESTABLISH ONE ALLOCATION SET-ASIDE FOR EACH CONTROL PERIOD FOR EACH STATE. EACH ALLOCATION SET-ASIDE WILL BE ALLOCATED NO_x ALLOWANCES EQUAL TO 5 PERCENT OF THE TONS OF NO_x EMISSION IN THE STATE'S TRADING PROGRAM BUDGET UNDER § 145.40, ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(2) THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE OF A NO_x BUDGET UNIT SPECIFIED IN THIS SECTION MAY SUBMIT TO THE DEPARTMENT A REQUEST, IN A FORMAT SPECIFIED BY THE DEPARTMENT, TO BE ALLOCATED NO_x ALLOWANCES FOR THE CONTROL PERIOD. THE NO_x ALLOWANCE ALLOCATION REQUEST MUST BE RECEIVED BY THE DEPARTMENT ON OR AFTER THE DATE ON WHICH THE STATE PERMITTING AUTHORITY ISSUES A PERMIT TO CONSTRUCT THE UNIT AND BY JANUARY 1 BEFORE THE CONTROL PERIOD FOR WHICH NO_x ALLOWANCES ARE REQUESTED.

(3) IN A NO_x ALLOWANCE ALLOCATION REQUEST UNDER PARAGRAPH (d)(2) OF THIS SECTION, THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE FOR A NO_x BUDGET UNIT UNDER § 145.4(a)(1) MAY REQUEST FOR THE CONTROL PERIOD NO_x ALLOWANCES IN AN AMOUNT THAT DOES NOT EXCEED THE LESSER OF THE FOLLOWING:

(i) 0.15 LB/MMBTU MULTIPLIED BY THE UNIT'S MAXIMUM DESIGN HEAT INPUT, MULTIPLIED BY THE LESSER OF 3,672 HOURS OR THE NUMBER OF HOURS REMAINING IN THE CONTROL PERIOD STARTING WITH THE DAY IN THE CONTROL PERIOD ON WHICH THE UNIT COMMENCES OPERATION OR IS PROJECTED TO COMMENCE OPERATION, DIVIDED BY 2,000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(ii) THE UNIT'S MOST STRINGENT STATE OR FEDERAL NO_x EMISSION LIMITATION MULTIPLIED BY THE UNIT'S MAXIMUM DESIGN HEAT INPUT, MULTIPLIED BY THE LESSER OF 3,672 HOURS OR THE NUMBER OF HOURS REMAINING IN THE CONTROL PERIOD STARTING WITH THE DAY IN THE CONTROL PERIOD ON WHICH THE UNIT COMMENCES OPERATION OR IS PROJECTED TO COMMENCE OPERATION, DIVIDED BY 2,000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(4) IN A NO_x ALLOWANCE ALLOCATION REQUEST UNDER PARAGRAPH (d)(2) OF THIS SECTION, THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE FOR A NO_x BUDGET UNIT UNDER § 145.4(a)(2) MAY

REQUEST FOR A CONTROL PERIOD NO_x ALLOWANCES IN AN AMOUNT THAT DOES NOT EXCEED THE LESSER OF THE FOLLOWING:

(i) 0.17 LB/MMBTU MULTIPLIED BY THE UNIT'S MAXIMUM DESIGN HEAT INPUT, MULTIPLIED BY THE LESSER OF 3,672 HOURS OR THE NUMBER OF HOURS REMAINING IN THE CONTROL PERIOD STARTING WITH THE DAY IN THE CONTROL PERIOD ON WHICH THE UNIT COMMENCES OPERATION OR IS PROJECTED TO COMMENCE OPERATION, DIVIDED BY 2,000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(ii) THE UNIT'S MOST STRINGENT STATE OR FEDERAL NO_x EMISSION LIMITATION MULTIPLIED BY THE UNIT'S MAXIMUM DESIGN HEAT INPUT, MULTIPLIED BY THE LESSER OF 3,672 HOURS OR THE NUMBER OF HOURS REMAINING IN THE CONTROL PERIOD STARTING WITH THE DAY IN THE CONTROL PERIOD ON WHICH THE UNIT COMMENCES OPERATION OR IS PROJECTED TO COMMENCE OPERATION, DIVIDED BY 2,000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(5) THE DEPARTMENT WILL REVIEW EACH NO_x ALLOWANCE ALLOCATION REQUEST SUBMITTED IN ACCORDANCE WITH PARAGRAPH (d)(2) OF THIS SECTION AND WILL ALLOCATE NO_x ALLOWANCES PURSUANT TO SUCH REQUEST AS FOLLOWS:

(i) UPON RECEIPT OF THE NO_x ALLOWANCE ALLOCATION REQUEST, THE DEPARTMENT WILL MAKE ANY NECESSARY ADJUSTMENTS TO THE REQUEST TO ENSURE THAT THE REQUIREMENTS OF PARAGRAPHS (d), (d)(2), (d)(3), AND (d)(4) ARE MET.

(ii) THE DEPARTMENT WILL DETERMINE THE FOLLOWING AMOUNTS:

(A) THE SUM OF THE NO_x ALLOWANCES REQUESTED (AS ADJUSTED UNDER PARAGRAPH (d)(5)(i) OF THIS SECTION) IN ALL NO_x ALLOWANCE ALLOCATION REQUESTS UNDER PARAGRAPH (d)(2) OF THIS SECTION FOR THE CONTROL PERIOD; AND

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

CONTROL PERIODS UNDER § 145.41(a)); MAY 1, 2003, (FOR CONTROL PERIODS UNDER § 145.41(b)); AND MAY 1 OF THE YEAR 5 YEARS BEFORE BEGINNING OF THE GROUP OF 5 YEARS THAT INCLUDES THE CONTROL PERIOD (FOR CONTROL PERIODS UNDER § 145.41(c)), THE SUM OF THE NO_x EMISSION LIMITATIONS (IN TONS OF NO_x) ON WHICH EACH UNIT'S EXEMPTION UNDER § 145.4(b) IS BASED.

(iii) IF THE NUMBER OF NO_x ALLOWANCES IN THE ALLOCATION SET-ASIDE FOR THE CONTROL PERIOD LESS THE AMOUNT UNDER PARAGRAPH (d)(5)(ii)(B) OF THIS SUBSECTION IS NOT LESS THAN THE AMOUNT DETERMINED UNDER PARAGRAPH (d)(5)(ii)(A) OF THIS SECTION, THE DEPARTMENT WILL ALLOCATE THE AMOUNT OF THE NO_x ALLOWANCES REQUESTED (AS ADJUSTED UNDER PARAGRAPH (d)(5)(i) OF THIS SECTION) TO THE NO_x BUDGET UNIT FOR WHICH THE ALLOCATION REQUEST WAS SUBMITTED.

(iv) IF THE NUMBER OF NO_x ALLOWANCES IN THE ALLOCATION SET-ASIDE FOR THE CONTROL PERIOD LESS THE AMOUNT UNDER PARAGRAPH (d)(5)(ii)(B) OF THIS SUBSECTION IS LESS THAN THE AMOUNT DETERMINED UNDER PARAGRAPH (d)(5)(ii)(A) OF THIS SECTION, THE DEPARTMENT WILL ALLOCATE, TO THE

NO_x BUDGET UNIT FOR WHICH THE ALLOCATION REQUEST WAS SUBMITTED, THE AMOUNT OF NO_x ALLOWANCES REQUESTED (AS ADJUSTED UNDER PARAGRAPH (d)(5)(i) OF THIS SECTION) MULTIPLIED BY THE NUMBER OF NO_x ALLOWANCES IN THE ALLOCATION SET-ASIDE FOR THE CONTROL PERIOD LESS THE AMOUNT DETERMINED UNDER PARAGRAPH (d)(5)(ii)(B) OF THIS SECTION, DIVIDED BY THE AMOUNT DETERMINED UNDER PARAGRAPH (d)(5)(ii)(A) OF THIS SECTION, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(e) BEGINNING IN THE 2008 CONTROL PERIOD, A NO_x BUDGET UNIT IDENTIFIED IN SUBSECTION (d) MAY, UPON REQUEST TO THE DEPARTMENT, RECEIVE ALLOCATIONS CALCULATED UNDER PARAGRAPHS (b) AND (c). IN ORDER FOR THE DEPARTMENT TO GRANT THE REQUEST, THE NO_x BUDGET UNIT MUST HAVE AT LEAST ONE COMPLETE CONTROL PERIOD OF HEAT INPUT DATA MEASURED AS SPECIFIED IN SECTIONS 145.70 THROUGH 145.75. IF HEAT INPUT DATA IS AVAILABLE FROM MORE THAN ONE CONTROL PERIOD BUT LESS THAN THE NUMBER OF CONTROL PERIODS SPECIFIED IN SUBSECTIONS (a)(1)(ii) OR (iii), THE DATA WILL BE AVERAGED BASED ON THE NUMBER OF AVAILABLE CONTROL PERIODS.

(f) THE NO_x BUDGET ADMINISTRATOR WILL TAKE THE FOLLOWING ACTION FOR SOURCES THAT ARE ALLOCATED NO_x ALLOWANCES UNDER PARAGRAPH (d) OF THIS SECTION:

(1) THE NO_x BUDGET ADMINISTRATOR WILL DEDUCT NO_x ALLOWANCES UNDER § 145.54(b), (e), OR (f) TO ACCOUNT FOR THE ACTUAL HEAT INPUT OF THE UNIT DURING THE CONTROL PERIOD. THE NO_x BUDGET ADMINISTRATOR WILL CALCULATE THE NUMBER OF NO_x ALLOWANCES TO BE DEDUCTED TO ACCOUNT FOR THE UNIT'S ACTUAL HEAT INPUT USING THE FOLLOWING FORMULAS AND ROUNDING TO THE NEAREST WHOLE NUMBER OF 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 HEAT INPUT FOR A UNIT UNDER §145.4(a)(1) = UNIT'S NO_x ALLOWANCES ALLOCATED FOR CONTROL PERIOD - (UNIT'S ACTUAL CONTROL PERIOD HEAT INPUT X UNIT'S EMISSION RATE X 2,000 LB/TON); AND

NO_x ALLOWANCES DEDUCTED FOR ACTUAL HEAT INPUT FOR A UNIT UNDER §145.4(a)(2) = UNIT'S NO_x ALLOWANCES ALLOCATED

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

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 PARAGRAPH (d) OF THIS SECTION; AND

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

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

(2) THE NO_x BUDGET ADMINISTRATOR WILL TRANSFER ANY NO_x ALLOWANCES DEDUCTED UNDER PARAGRAPH (c)(1) OF THIS SECTION TO THE ALLOCATION SET-ASIDE FOR THE CONTROL PERIOD FOR WHICH THEY WERE ALLOCATED.

(g) AFTER MAKING THE DEDUCTIONS FOR COMPLIANCE UNDER § 145.54(b), (e), OR (f) FOR A CONTROL PERIOD, THE NO_x BUDGET ADMINISTRATOR WILL

DETERMINE WHETHER ANY NO_x ALLOWANCES REMAIN IN THE ALLOCATION SET-ASIDE FOR THE CONTROL PERIOD. THE NO_x BUDGET ADMINISTRATOR WILL ALLOCATE ANY SUCH NO_x ALLOWANCES TO THE NO_x BUDGET UNITS IN THE STATE USING THE FOLLOWING FORMULA AND ROUNDING TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES 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'S 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;

"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'S TRADING PROGRAM BUDGET EXCLUDING ALLOCATION SET-ASIDE" IS THE STATE'S TRADING PROGRAM BUDGET UNDER § 145.40 FOR THE CONTROL PERIOD TO WHICH THE ALLOCATION SET-ASIDE APPLIES MULTIPLIED BY 95 PERCENT, ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE.

(h) IF THE DEPARTMENT DETERMINES THAT NO_x ALLOWANCES WERE ALLOCATED UNDER PARAGRAPH (b), (c), OR (d) OF THIS SECTION FOR A CONTROL PERIOD AND THE RECIPIENT OF THE ALLOCATION IS NOT ACTUALLY A NO_x BUDGET UNIT UNDER § 145.4(a), THE DEPARTMENT WILL NOTIFY THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE AND THEN WILL ACT IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

(1) THE NO_x BUDGET ADMINISTRATOR WILL NOT RECORD SUCH NO_x ALLOWANCES FOR THE CONTROL PERIOD IN AN ACCOUNT UNDER § 145.53.

(i) IF THE NO_x BUDGET ADMINISTRATOR ALREADY RECORDED SUCH NO_x ALLOWANCES FOR THE CONTROL PERIOD IN AN ACCOUNT UNDER § 145.53 AND IF THE NO_x BUDGET ADMINISTRATOR MAKES SUCH DETERMINATION BEFORE MAKING ALL DEDUCTIONS PURSUANT TO § 145.54 (EXCEPT DEDUCTIONS PURSUANT TO § 145.54(d)(2)) FOR THE CONTROL

PERIOD, THEN THE NO_x BUDGET ADMINISTRATOR WILL DEDUCT FROM THE ACCOUNT NO_x ALLOWANCES EQUAL IN NUMBER TO AND ALLOCATED FOR THE SAME OR A PRIOR CONTROL PERIOD AS THE NO_x ALLOWANCES ALLOCATED TO SUCH RECIPIENT FOR THE CONTROL PERIOD. THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE SHALL ENSURE THAT THE ACCOUNT CONTAINS THE NO_x ALLOWANCES NECESSARY FOR COMPLETION OF SUCH DEDUCTION. IF THE ACCOUNT DOES NOT CONTAIN THE NECESSARY 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 THE ACCOUNT.

(ii) IF THE NO_x BUDGET ADMINISTRATOR ALREADY RECORDED SUCH NO_x ALLOWANCES FOR THE CONTROL PERIOD IN AN ACCOUNT UNDER § 145.53 AND IF THE NO_x BUDGET ADMINISTRATOR MAKES SUCH DETERMINATION AFTER MAKING ALL DEDUCTIONS PURSUANT TO § 145.54 (EXCEPT DEDUCTIONS PURSUANT TO § 145.54(d)(2)) FOR THE CONTROL PERIOD, THEN THE NO_x BUDGET ADMINISTRATOR WILL APPLY PARAGRAPH (g)(1)(i) OF THIS SECTION TO ANY SUBSEQUENT CONTROL PERIOD

FOR WHICH NO_x ALLOWANCES WERE ALLOCATED TO SUCH RECIPIENT.

(2) THE NO_x BUDGET ADMINISTRATOR WILL TRANSFER THE NO_x ALLOWANCES THAT ARE NOT RECORDED, OR THAT ARE DEDUCTED, PURSUANT TO PARAGRAPH (g)(1) OF THIS SECTION TO AN ALLOCATION SET-ASIDE FOR THE STATE IN WHICH SUCH SOURCE IS LOCATED.

[(i) For an NO_x allowance allocation under § 145.41(a) (relating to timing requirements for NO_x allowance allocations), 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).

(ii) For an NO_x allowance allocation under § 145.41(b), the unit's heat input for the control period in the year that is 4 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) will be determined in accordance with 40 CFR Part 75 (relating to continuous emission monitoring) if the NO_x budget unit was otherwise subject to 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 40 CFR Part 75 for

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

[(b) For each control period under § 145.41 (relating to timing requirements for NO_x allowance allocations), 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 % in 2003, 2004 and 2005, or 98% thereafter, of the tons of NO_x emissions in the State trading program budget apportioned to electric generating units under § 145.40 (relating to State trading program budget) 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 this Commonwealth for a control period under paragraph (1) does not equal 95 % in 2003, 2004 and 2005, or 98% 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 of the NO_x budget units for the control period under paragraph (1) so that the total number of NO_x allowances allocated equals 95 % in 2003, 2004 and 2005, or 98% 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 % in 2003, 2004 and 2005, or 98% 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 (1), 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 this Commonwealth 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 % in 2003, 2004 and 2005, or 98% thereafter, of the tons of NO_x emissions in the Pennsylvania trading program budget apportioned to nonelectric 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 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(2) in this Commonwealth for a control period under paragraph (1) does not equal 95 % in 2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO_x emissions in the Pennsylvania trading program budget apportioned to nonelectric generating units, the Department will adjust the total number of NO_x allowances allocated to all of the NO_x budget units for the control period under paragraph (1) so that the total number of NO_x allowances allocated equals 95 % in 2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO_x emissions in the Pennsylvania trading program budget apportioned to nonelectric generating units. This adjustment will be made by multiplying each unit's allocation by 95 % in 2003, 2004 and 2005, or 98% thereafter, of the number of tons of NO_x emissions in the Pennsylvania trading program budget apportioned to nonelectric 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 this Commonwealth 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% in 2003, 2004

and 2005, or 2% 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 this subsection may submit to the Department a request , as part of a plan approval application under Chapter 127, Subchapter B (relating to plan approval requirements), 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 (relating to construction, modification, reactivation and operation of sources).

(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 allowance 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 under 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 paragraphs (2) and (3) and, for units under § 145.4(2), the control period and the number of allowances specified are consistent with 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 under, any NO_x allowance allocation request under which NO_x allowances have not already been allocated for the control period.]

[(e) For an 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) (relating to compliance) 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).

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 subsection (b) or (c) to the unit for the control period to which the allocation set-aside applies.

''State trading program budget excluding allocation set-aside'' is the Pennsylvania trading program budget under § 145.40 for the control period to which the allocation set-aside applies multiplied by 95 % if the control period is in 2003, 2004 or 2005 or 98 % if the control period is in any year thereafter, rounded to the nearest whole NO_x allowance as appropriate.]

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

§ 145.43 COMPLIANCE SUPPLEMENT POOL.

(a) FOR ANY NO_x BUDGET UNIT THAT REDUCES ITS NO_x EMISSION RATE IN THE 2001 OR 2002 CONTROL PERIOD, THE OWNERS AND OPERATORS MAY REQUEST EARLY REDUCTION CREDITS IN ACCORDANCE WITH THE FOLLOWING REQUIREMENTS:

(1) EACH NO_x BUDGET UNIT FOR WHICH THE OWNERS AND OPERATORS INTEND TO REQUEST, OR REQUEST, ANY EARLY REDUCTION CREDITS IN ACCORDANCE WITH PARAGRAPH (a)(4) OF THIS SECTION SHALL MONITOR AND REPORT NO_x EMISSIONS IN ACCORDANCE WITH THIS SUBCHAPTER STARTING IN THE 2000 CONTROL PERIOD AND FOR EACH CONTROL PERIOD FOR WHICH SUCH EARLY REDUCTION CREDITS ARE REQUESTED. THE UNIT'S PERCENT MONITOR DATA AVAILABILITY SHALL NOT BE LESS THAN 90 PERCENT DURING THE 2000 CONTROL PERIOD, AND THE UNIT MUST BE IN COMPLIANCE WITH ANY APPLICABLE STATE OR FEDERAL NO_x EMISSION CONTROL REQUIREMENTS DURING 2000 THROUGH 2002.

(2) NO_x EMISSION RATE AND HEAT INPUT UNDER PARAGRAPHS (a)(3) AND (4) OF THIS SECTION SHALL BE DETERMINED IN ACCORDANCE WITH THIS SUBCHAPTER.

(3) EACH NO_x BUDGET UNIT FOR WHICH THE OWNERS AND OPERATORS INTEND TO REQUEST, OR REQUEST, ANY EARLY REDUCTION CREDITS

UNDER PARAGRAPH (a)(4) OF THIS SECTION 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 THAT MEETS THE REQUIREMENTS OF PARAGRAPHS (a)(1)AND (3) OF THIS SECTION 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.

(i) IN THE EARLY REDUCTION CREDIT REQUEST, THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE 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 WHOLE NUMBER OF TONS.

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

(b) FOR ANY NO_x BUDGET UNIT THAT IS SUBJECT TO THE REQUIREMENTS OF §§ 123.101 THROUGH 123.120, THE OWNERS AND OPERATORS MAY REQUEST EARLY REDUCTION CREDITS IN ACCORDANCE WITH THE FOLLOWING REQUIREMENTS:

(1) THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE OF THE UNIT MAY SUBMIT TO THE DEPARTMENT A REQUEST FOR EARLY REDUCTION CREDITS IN AN AMOUNT EQUAL TO THE AMOUNT OF BANKED ALLOWANCES UNDER §§ 123.101 THROUGH 123.120 THAT WERE ALLOCATED FOR THE CONTROL PERIOD IN 2001 OR 2002 AND ARE HELD BY THE UNIT, IN ACCORDANCE §§ 123.101 THROUGH 123.120, AS OF THE DATE OF SUBMISSION OF THE REQUEST. DURING THE ENTIRE CONTROL PERIOD IN 2001 OR 2002 FOR WHICH THE ALLOWANCES WERE ALLOCATED, THE UNIT MUST HAVE MONITORED AND REPORTED NO_x EMISSIONS IN ACCORDANCE THE GUIDANCE FOR IMPLEMENTATION OF EMISSION MONITORING REQUIREMENTS FOR THE NO_x BUDGET PROGRAM (JANUARY 28, 1997).

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

(3) THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE OF THE UNIT SHALL NOT SUBMIT A REQUEST FOR EARLY REDUCTION CREDITS UNDER PARAGRAPH (b)(1) OF THIS SECTION FOR BANKED ALLOWANCES UNDER THE OZONE TRANSPORT COMMISSION NO_x BUDGET PROGRAM THAT WERE ALLOCATED FOR ANY CONTROL PERIOD DURING WHICH THE UNIT MADE NO_x EMISSION REDUCTIONS FOR WHICH HE OR SHE SUBMITS A REQUEST FOR EARLY REDUCTION CREDITS UNDER PARAGRAPH (a) OF THIS SECTION FOR THE UNIT.

(c) FOR ANY NO_x BUDGET UNIT THAT IS SUBJECT TO THE REQUIREMENTS OF SECTIONS 123.101 THROUGH 123.120 THAT INSTALLS SELECTIVE CATALYTIC REDUCTION OR SELECTIVE NONCATALYTIC REDUCTION TO REDUCE NO_x EMISSIONS AFTER MAY 1999, THE OWNERS AND OPERATORS MAY REQUEST CONTROL EQUIPMENT EARLY REDUCTION CREDITS IN ACCORDANCE WITH THE FOLLOWING REQUIREMENTS:

(1) EACH NO_x BUDGET UNIT FOR WHICH THE OWNERS AND OPERATORS INTEND TO REQUEST, OR REQUEST EARLY REDUCTION

CREDITS IN ACCORDANCE WITH THIS PARAGRAPH (c) OF THIS SECTION SHALL MONITOR AND REPORT NO_x EMISSIONS IN ACCORDANCE WITH THE REQUIREMENTS OF THIS CHAPTER.

(2) THE UNIT MUST BE IN COMPLIANCE WITH ANY APPLICABLE STATE OR FEDERAL NO_x CONTROL REQUIREMENTS.

(3) NO_x EMISSION RATE AND HEAT INPUT UNDER PARAGRAPH (c) SHALL BE DETERMINED IN ACCORDANCE WITH THIS SUBCHAPTER.

(4) EACH NO_x BUDGET UNIT SHALL REDUCE ITS NO_x EMISSIONS, FOR EACH CONTROL PERIOD FOR WHICH EARLY REDUCTION CREDITS ARE REQUESTED, TO LESS THAN THE ALLOWANCES FOR THE UNIT ESTABLISHED IN CHAPTER 123 APPENDIX E.

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

(d) FOR ANY NO_x BUDGET UNIT THAT INSTALLS AND OPERATES INNOVATIVE CONTROL TECHNOLOGY, THE OWNERS AND OPERATORS MAY REQUEST

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

(1) FOR PURPOSES OF PARAGRAPH (d), INNOVATIVE CONTROL TECHNOLOGY IS ANY TECHNOLOGY THAT REDUCES THE EMISSIONS OF MULTIPLE AIR CONTAMINANTS, INCLUDING, AT A MINIMUM, NO_x, SO2 AND MERCURY, THROUGH THE APPLICATION OF TECHNOLOGY OR TECHNOLOGY IMPROVEMENTS NOT PREVIOUSLY APPLIED TO NO_x BUDGET UNITS IN AN AMOUNT GREATER THAN ANY APPLICABLE STATE OR FEDERAL REQUIREMENT.

(2) THE UNIT MUST BE IN COMPLIANCE WITH ANY APPLICABLE STATE OR FEDERAL NO_x CONTROL REQUIREMENTS.

(3) NO_x EMISSION RATE AND HEAT INPUT UNDER PARAGRAPH (d) SHALL BE DETERMINED IN ACCORDANCE WITH THIS SUBCHAPTER.

(4) THE OWNERS AND OPERATORS OF EACH NO_x BUDGET UNIT SHALL SUBMIT A PROPOSAL FOR THE DEVELOPMENT, DESIGN, AND TESTING OF INNOVATIVE CONTROL TECHNOLOGY INCLUDING MILESTONES FOR COMPLETING EACH PHASE OF THE PROPOSAL ALONG WITH A PROPOSAL AND JUSTIFICATION FOR THE NUMBER OF INNOVATIVE

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

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

(6) FAILURE TO COMPLETE ANY PHASE OF THE PROPOSAL BY THE MILESTONE DATE ESTABLISHED UNDER THIS SECTION SHALL RESULT IN A LOSS OF ALLOWANCES IN AN AMOUNT EQUAL TO THE AMOUNT OF THE INNOVATIVE EARLY REDUCTION CREDITS GRANTED TO THE NO_x BUDGET UNIT.

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

(e) THE DEPARTMENT WILL REVIEW EACH EARLY REDUCTION CREDIT REQUEST SUBMITTED IN ACCORDANCE WITH PARAGRAPHS (a) THROUGH (d) OF THIS SECTION AND WILL ALLOCATE NO_x ALLOWANCES TO NO_x BUDGET UNITS IN A GIVEN STATE AND COVERED BY SUCH REQUEST AS FOLLOWS:

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

(2) AFTER FEBRUARY 1, 2003, THE DEPARTMENT WILL PUBLISH IN THE PENNSYLVANIA BULLETIN A STATEMENT OF THE TOTAL NUMBER OF EARLY REDUCTION CREDITS REQUESTED BY NO_x BUDGET UNITS IN THE STATE.

(3) PENNSYLVANIA'S COMPLIANCE SUPPLEMENT POOL IS 15,763 NO_x ALLOWANCES.

(i) 1,576 NO_x ALLOWANCES ARE AVAILABLE FOR THE CONTROL EQUIPMENT EARLY REDUCTION CREDITS ESTABLISHED UNDER SUBPARAGRAPH (c).

(ii) 1,576 NO_x ALLOWANCES ARE AVAILABLE FOR THE INNOVATIVE TECHNOLOGY EARLY REDUCTION CREDITS ESTABLISHED UNDER SUBPARAGRAPH (d).

(iii) 12,611 NO_x ALLOWANCES ARE AVAILABLE FOR THE EARLY REDUCTION CREDITS ESTABLISHED UNDER SUBPARAGRAPHS (a) AND (b).

(iv) ANY UNUSED EARLY REDUCTION CREDITS ESTABLISHED UNDER SUBPARAGRAPHS (i) AND (ii) SHALL BE AVAILABLE FOR THE EARLY REDUCTION CREDITS ESTABLISHED UNDER SUBPARAGRAPHS (a) AND (b).

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

(4) IF THE COMPLIANCE SUPPLEMENT POOL FOR EACH OF THE CATEGORIES OF EARLY REDUCTION CREDITS ESTABLISHED IN SUBPARAGRAPH 3 HAS A NUMBER OF NO_x ALLOWANCES NOT LESS THAN THE AMOUNT OF EARLY REDUCTION CREDITS IN ALL EARLY REDUCTION CREDIT REQUESTS RECEIVED UNDER SUBPARAGRAPHS (a) THROUGH (d) (AS ADJUSTED UNDER PARAGRAPH (e)(1) OF THIS SECTION) SUBMITTED BY FEBRUARY 1, 2003, THE DEPARTMENT WILL ALLOCATE TO EACH NO_x BUDGET UNIT COVERED BY SUCH REQUEST ONE ALLOWANCE FOR EACH EARLY REDUCTION CREDIT REQUESTED (AS ADJUSTED UNDER PARAGRAPH (e)(1) OF THIS SECTION).

(5) IF THE COMPLIANCE SUPPLEMENT POOL HAS A SMALLER NUMBER OF NO_x ALLOWANCES FOR ANY OF THE CATEGORIES OF EARLY REDUCTION CREDITS ESTABLISHED IN SUBPARAGRAPH 3 THAN THE AMOUNT OF EARLY REDUCTION CREDITS IN ALL EARLY REDUCTION REQUESTS UNDER PARAGRAPHS (a) THROUGH (d) OF THIS SECTION FOR 2001 AND 2002 (AS ADJUSTED UNDER PARAGRAPH (e)(1) OF THIS SECTION) SUBMITTED BY FEBRUARY 1, 2003, THE DEPARTMENT WILL ALLOCATE NO_x ALLOWANCES FOR EACH OF THE CATEGORIES ESTABLISHED IN SUBPARAGRAPH 3 TO EACH NO_x BUDGET UNIT COVERED BY SUCH REQUESTS ACCORDING TO THE FOLLOWING FORMULA AND ROUNDING TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE. THIS PRORATA ALLOCATION WILL BE PERFORMED FOR ALLOCATIONS UNDER PARAGRAPHS (c) AND (d) AND ANY REQUESTS FOR NO_x ALLOWANCES THAT ARE NOT FULLY ALLOCATED SHALL BE AVAILABLE FOR ALLOCATION UNDER PARAGRAPHS (a) AND (b) IF THEY OTHERWISE QUALIFY UNDER THOSE PARAGRAPHS:

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

WHERE:

"UNIT'S ALLOCATION FOR EARLY REDUCTION CREDITS" IS THE NUMBER OF NO_x ALLOWANCES ALLOCATED TO THE UNIT FOR EARLY REDUCTION CREDITS.

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

"STATES COMPLIANCE SUPPLEMENT POOL" IS THE NUMBER OF NO_x ALLOWANCES FOR EACH CATEGORY OF EARLY REDUCTION CREDITS ESTABLISHED IN SUBPARAGRAPH 3.

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

(6) BY APRIL 1, 2003, THE DEPARTMENT WILL DETERMINE THE ALLOCATIONS UNDER PARAGRAPH (e)(4) OR (5) OF THIS SECTION. THE DEPARTMENT WILL MAKE AVAILABLE TO THE PUBLIC EACH DETERMINATION OF NO_x ALLOWANCE ALLOCATIONS AND WILL PROVIDE AN OPPORTUNITY FOR COMMENT. BASED ON ANY SUCH COMMENTS, THE DEPARTMENT WILL ADJUST EACH DETERMINATION TO THE EXTENT NECESSARY TO ENSURE THAT IT IS IN ACCORDANCE WITH PARAGRAPH (e)(1), (4), OR (5) OF THIS SECTION.

(7) BY MAY 1, 2003, THE NO_x BUDGET ADMINISTRATOR WILL RECORD THE ALLOCATIONS UNDER PARAGRAPH (e)(3) OR (5) OF THIS SECTION.

(8) NO_x ALLOWANCES RECORDED UNDER PARAGRAPH (e)(7) OF THIS SECTION MAY BE DEDUCTED FOR COMPLIANCE UNDER § 145.54 FOR THE CONTROL PERIOD IN 2003 OR 2004. NOTWITHSTANDING § 145.55(a), THE NO_x BUDGET ADMINISTRATOR WILL DEDUCT AS RETIRED ANY NO_x ALLOWANCE THAT IS RECORDED UNDER PARAGRAPH (e)(7) OF THIS SECTION AND THAT IS NOT DEDUCTED FOR COMPLIANCE UNDER § 145.54 FOR THE CONTROL PERIOD IN 2003 OR 2004.

(9) NO_x ALLOWANCES RECORDED UNDER PARAGRAPH (e)(7) OF THIS SECTION ARE TREATED AS BANKED ALLOWANCES IN 2004 FOR THE PURPOSES OF §§ 145.54(f) AND 145.55(b).

ACCOUNTING PROCESS FOR DEPOSIT, USE AND TRANSFER OF ALLOWANCES

§ 145.50. NO_x Allowance Tracking System accounts.

(a) *Nature and function of compliance accounts and overdraft accounts.* Consistent with § 145.51(a) (relating to establishment of accounts), the NO_x Budget Administrator will establish one compliance account for each NO_x budget unit and one overdraft account for each source with **TWO [one]** or more NO_x budget units. Allocations of NO_x allowances under §§ 145.40–145.42 or § 145.88 (relating to NO_x allowance allocations; and opt-in source change in regulatory status) and deductions or transfers of NO_x allowances under § 145.31, § 145.54, § 145.56, §§ 145.6**0**–145.62, or §§ 145.80–145.88 will be recorded in the compliance accounts or overdraft accounts.

(b) *Nature and function of general accounts.* Consistent with § 145.51(b) (relating to establishment of accounts), the NO_x Budget Administrator will establish, upon request, a general account for any person. Transfers of allowances under §§ 145.60–145.62 (relating to NO_x allowance transfers) 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 (relating to account certificate of representation), the NO_x Budget Administrator will establish the following:

(1) A compliance account for each NO_x budget unit for which the account certificate of representation was submitted.

(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) *Elements for account.*

(i) A 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:

(A) The 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.

(B) The organization name and type of organization.

(C) 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.

(D) 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."

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

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

(2) *Receipt of complete application.* 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 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 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, not-withstanding an agreement between the NO_x authorized account representative or an alternate NO_x authorized account representative and the person. This person shall be bound by any order or decision issued to the NO_x authorized account

representative or an 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 an 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 submission shall include the following certification statement by the NO_x authorized account representative or an alternate NO_x authorized account representative:

> "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 only one NO_x authorized account representative and 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 an 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 a change, the 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 a change, the 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) A revision of ownership listing shall include the following:

(A) If a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of persons in the account certificate of representation, the 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 the 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 an 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 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 will affect any representation, action, inaction or submission of the NO_x authorized account representative or an alternate NO_x authorized account representative or the finality of an 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 a private legal dispute concerning the authorization or 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 subsection (a) or (b).

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

(a) *Establishment of account.* Following the establishment of an NO_x Allowance Tracking System account, the 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 §§ 145.40–145.42 (relating to NO_x allowance allocations). The NO_x Budget Administrator will also record the NO_x allowances allocated under § 145.88(a)(1) (relating to NO_x allowance allocations to opt-in units) for each NO_x budget opt-in source in its compliance account. **NO_x ALLOWANCES UNDER § 145.4(b)(4)(ii) OR § 145.5(c)(2) WILL BE RECORDED IN THE GENERAL ACCOUNT SPECIFIED BY THE OWNERS AND OPERATORS OF THE UNIT.**

(b) BY MAY 1, 2001, THE NO_x BUDGET ADMINISTRATOR WILL RECORD THE NO_x ALLOWANCES FOR 2004 FOR A NO_x BUDGET UNIT ALLOCATED UNDER §§ 145.40 THROUGH 145.43 IN THE UNIT'S COMPLIANCE ACCOUNT, EXCEPT FOR NO_x ALLOWANCES UNDER § 145.4(b)(4)(ii) OR § 145.5(c)(2), WHICH WILL BE RECORDED IN THE GENERAL ACCOUNT SPECIFIED BY THE OWNERS AND OPERATORS OF THE UNIT. THE NO_x BUDGET ADMINISTRATOR WILL RECORD NO_x ALLOWANCES FOR 2004 FOR A NO_x BUDGET OPT-IN UNIT IN THE UNIT'S COMPLIANCE ACCOUNT AS ALLOCATED UNDER § 145.88(a).

(c) BY MAY 1, 2002, THE NO_x BUDGET ADMINISTRATOR WILL RECORD THE NO_x ALLOWANCES FOR 2005 FOR A NO_x BUDGET UNIT ALLOCATED UNDER §§ 145.40 THROUGH 145.43 IN THE UNIT'S COMPLIANCE ACCOUNT, EXCEPT FOR NO_x ALLOWANCES UNDER § 145.4(b)(4)(ii) OR § 145.5(c)(2), WHICH WILL BE RECORDED IN THE GENERAL ACCOUNT SPECIFIED BY THE OWNERS AND OPERATORS OF THE UNIT. THE NO_x BUDGET ADMINISTRATOR WILL RECORD NO_x ALLOWANCES FOR 2005 FOR A NO_x BUDGET OPT-IN UNIT IN THE UNIT'S COMPLIANCE ACCOUNT AS ALLOCATED UNDER § 145.88(a).

(d) BY MAY 1, 2003, THE NO_x BUDGET ADMINISTRATOR WILL RECORD THE NO_x ALLOWANCES FOR 2006 FOR A NO_x BUDGET UNIT ALLOCATED UNDER §§ 145.40 THROUGH 145.43 IN THE UNIT'S COMPLIANCE ACCOUNT, EXCEPT FOR NO_x ALLOWANCES UNDER § 145.4(b)(4)(ii) OR § 145.5(c)(2), WHICH WILL BE RECORDED IN THE GENERAL ACCOUNT SPECIFIED BY THE OWNERS AND OPERATORS OF THE UNIT. THE NO_x BUDGET ADMINISTRATOR WILL RECORD NO_x ALLOWANCES FOR 2006 FOR A NO_x BUDGET OPT-IN UNIT IN THE UNIT'S COMPLIANCE ACCOUNT AS ALLOCATED UNDER § 145.88(a).

(e) EACH YEAR STARTING WITH 2004, 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 (EXCEPT DEDUCTIONS PURSUANT TO § 145.54(d)(2)), THE NO_x BUDGET ADMINISTRATOR WILL RECORD THE FOLLOWING:

(1) NO_x ALLOWANCES, IN THE COMPLIANCE ACCOUNT, AS ALLOCATED TO THE UNIT UNDER §§ 145.40 THROUGH 145.43 FOR THE THIRD YEAR AFTER THE YEAR OF THE CONTROL PERIOD FOR WHICH SUCH DEDUCTIONS WERE OR COULD HAVE BEEN MADE.

(2) NO_x ALLOWANCES, IN THE GENERAL ACCOUNT SPECIFIED BY THE OWNERS AND OPERATORS OF THE UNIT, AS ALLOCATED UNDER § 145.4(b)(4)(ii) OR § 145.5(c)(2) FOR THE THIRD YEAR AFTER THE YEAR OF THE CONTROL PERIOD FOR WHICH SUCH DEDUCTIONS ARE OR COULD HAVE BEEN MADE.

(3) NO_x ALLOWANCES, IN THE COMPLIANCE ACCOUNT, AS ALLOCATED TO THE UNIT UNDER § 145.88(a).

[(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 under § 145.54 (relating to compliance), the NO_x Budget Administrator will record NO_x allowances, as allocated to the unit under §§ 145.40–145.42 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 §§ 145.40–145.42, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.]

(f) [(c)] 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 meet the following conditions:

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

(2) The allowances are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_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 (relating to submission of NO_x allowance transfers) by the NO_x allowance transfer deadline for that control period.

(b) *Deductions for compliance.*

(1) Following the recordation, in accordance with § 145.61 (relating to NO_x transfer

recordation), 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 subsection (a) to cover the unit's NO_x emissions (as determined in accordance with §§ 145.70–145.76 (relating to recordkeeping and reporting requirements)), or to account for actual **HEAT INPUT** **[utilization]** under § 145.42(e) (relating to NO_x allowance allocations), for the control period:

(i) From the compliance account.

(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 **(b)(1)**(i) and then under subparagraph **(b)(1)**(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 §§ 145.70–145.76, 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 **HEAT INPUT [utilization]** under § 145.42(e) for the control period.

(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 subsection (b), (d)**, [or]** (e) **OR (f)**. The identification shall be made in the compliance certification report submitted in accordance with § 145.30 (relating to compliance certification report).

(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–**[145.42]** **145.43** or §§ 145.80–145.88 (relating to NO_x allowance allocations; and opt-in process).

(ii) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account under §§ 145.60–145.62 (relating to NO_x allowance transfers), 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–**[145.42]** **145.43** or §§ 145.80–145.88.

(iv) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account under §§ 145.60–145.62, 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) An allowance deduction required under subsection (d) does 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 Clean Air Act or the 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 §§ 145.70–145.76:

(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. The identification shall be made in the compliance certification report submitted in accordance with § 145.30.

(2) Notwithstanding subparagraph **(b)(2)**(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 (1)) of the number of tons of NO_x emissions, as determined in accordance with §§ 145.70–145.76, 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 unit, plus the number of allowances required for deduction to account for actual **HEAT INPUT [utilization]** under § 145.42(e) for the control period.

(f) *DEDUCTION OF BANKED ALLOWANCES.* EACH YEAR STARTING IN 2005, AFTER THE NO_x BUDGET ADMINISTRATOR HAS COMPLETED THE DESIGNATION OF BANKED ALLOWANCES UNDER § 145.55(b) AND BEFORE MAY 1 OF THE YEAR, THE NO_x BUDGET ADMINISTRATOR WILL DETERMINE THE EXTENT TO WHICH BANKED NO_x ALLOWANCES OTHERWISE AVAILABLE UNDER SUBSECTION (a) ARE AVAILABLE FOR COMPLIANCE IN THE CONTROL PERIOD FOR THE CURRENT YEAR AS FOLLOWS:

(1) THE NO_x BUDGET ADMINISTRATOR WILL DETERMINE THE TOTAL NUMBER OF BANKED NO_x ALLOWANCES HELD IN COMPLIANCE

ACCOUNTS, OVERDRAFT ACCOUNTS, OR GENERAL ACCOUNTS.

(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 PERCENT OF THE SUM OF THE TRADING PROGRAM BUDGETS UNDER § 145.40 FOR ALL STATES FOR THE CONTROL PERIOD, ANY BANKED NO_x ALLOWANCE MAY BE DEDUCTED FOR COMPLIANCE IN ACCORDANCE WITH SUBSECTIONS (a) THROUGH (e).

(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 PERCENT OF THE SUM OF THE TRADING PROGRAM BUDGETS UNDER § 145.40 FOR PENNSYLVANIA AND THE TRADING PROGRAM BUDGETS APPROVED BY THE ADMINISTRATOR FOR OTHER STATES PARTICIPATING IN THE NO_x BUDGET TRADING PROGRAM FOR THE CONTROL PERIOD, ANY BANKED ALLOWANCE MAY BE DEDUCTED FOR COMPLIANCE IN ACCORDANCE WITH SUBSECTIONS (a) THROUGH (e), EXCEPT AS FOLLOWS:

(i) THE NO_x BUDGET ADMINISTRATOR WILL DETERMINE THE

FOLLOWING RATIO: 0.10 MULTIPLIED BY THE SUM OF THE TRADING PROGRAM BUDGETS UNDER § 145.40 FOR ALL STATES FOR THE CONTROL PERIOD AND DIVIDED BY THE TOTAL NUMBER OF BANKED NO_x ALLOWANCES DETERMINED, UNDER PARAGRAPH (f)(1), TO BE HELD IN COMPLIANCE ACCOUNTS, OVERDRAFT ACCOUNTS, OR GENERAL ACCOUNTS.

(ii) THE NO_x BUDGET ADMINISTRATOR WILL MULTIPLY THE NUMBER OF BANKED NO_x ALLOWANCES IN EACH COMPLIANCE ACCOUNT OR OVERDRAFT ACCOUNT BY THE RATIO DETERMINED UNDER SUBPARAGRAPH (f)(3)(i). THE RESULTING PRODUCT IS THE NUMBER OF BANKED NO_x ALLOWANCES IN THE ACCOUNT THAT MAY BE DEDUCTED FOR COMPLIANCE IN ACCORDANCE WITH SUBSECTIONS (a) THROUGH (e), EXCEPT THAT, IF SUCH NO_x ALLOWANCES ARE USED TO MAKE A DEDUCTION UNDER SUBSECTION (b) OR (e), TWO (RATHER THAN ONE) SUCH NO_x ALLOWANCES SHALL AUTHORIZE UP TO ONE TON OF NO_x EMISSIONS DURING THE CONTROL PERIOD AND MUST BE DEDUCTED FOR EACH DEDUCTION OF ONE NO_x ALLOWANCE REQUIRED UNDER SUBSECTION (b) OR (e).

(g) [(f)] The NO_x Budget Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account under subsection (b), (d)**, [or]** (e) **OR (f)**.

§ 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) An NO_x allowance that is held in a compliance account, an overdraft account or a general account will remain in the account until the NO_x allowance is deducted or transferred under § 145.31, § 145.54, § 145.56, §§ 145.60–145.62 or §§ 145.80–145.88.

(2) The NO_x Budget Administrator will designate, as a "banked" NO_x allowance, an NO_x allowance that remains in a compliance account, an overdraft account or a general account after deductions have been made for a given control period from the compliance account or overdraft account under § 145.54 (relating to compliance) **(EXCEPT DEDUCTIONS PURSUANT TO § 145.54(d)(2)) AND THAT WERE ALLOCATED FOR THAT CONTROL PERIOD OR A CONTROL PERIOD IN A PRIOR YEAR)**.

[(b) Each year starting in 2004, after the designation of banked NO_x allowances under subsection (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. Banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with § 145.54, except that, if the NO_x allowances are used to make a deduction, two of the NO_x allowances shall be deducted for each deduction of one NO_x allowance required under § 145.54.]

[(c) An 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 §§ 145.70–145.76 (relating to recordkeeping and reporting requirements) starting in the 2000 control period and for each control period for which the early reduction credits are requested. The unit's monitoring system availability shall be at least 90% during the 2000 control period, and the unit shall 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)–(5) shall be determined in accordance with §§ 145.70–145.76.

(3) Each NO_x budget unit for which the owner or operator requests early 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% 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 this Commonwealth 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 the control period in an amount equal to the unit's heat input for the control period multiplied by the difference between 0.25 lb/mmBtu and the unit's NO_x emission rate for the control period, divided by 2000 lb/ton, and rounded to the nearest ton.

(ii) The early reduction credit request shall 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 this Commonwealth'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 the accepted requests one allowance for each early reduction credit requested (as adjusted under subparagraph (i)).

(iii) If this Commonwealth'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 the accepted requests according to the following formula:

Unit's allocated early reduction credits = [(Unit's adjusted early reduction credits)/(Total adjusted early reduction credits requested by all units)] x (Available NO_x allowances from this Commonwealth compliance supplement pool)

Where:

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

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

''Available NO_x allowances from this Commonwealth's compliance supplement pool'' is the number of NO_x allowances in this Commonwealth's compliance supplement pool and available for early reduction credits for 2001 and 2002.

(6) By May 1, 2003, the Department will allocate the NO_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)– (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 subsection (a), 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 this Commonwealth under § 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 shall submit the application as required by subsection (c) to the Department.

(10) The compliance supplement pool for this Commonwealth 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 the 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 (relating to submission of NO_x allowance transfers) 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 1 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.

NO_x ALLOWANCE TRANSFERS

§ 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.

(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, if the following conditions are met (relating to submission of NO_x allowance transfers).

(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.

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

(b) An 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)]** (relating to recordation of NO_x allowance allocations) **IN THE SAME YEAR AS THE NO_x ALLOWANCE TRANSFER DEADLINE.**

(c) An 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 (relating to NO_x transfer recordation), 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 nonrecordation.* 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.

(2) The reasons for the nonrecordation.

(c) *Resubmission.* Nothing in this section precludes the submission of a NO_x allowance transfer for recordation following notification of nonrecordation.

RECORDKEEPING AND REPORTING REQUIREMENTS

§ 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 this section and §§ 145.71–145.76 (relating to recordkeeping and reporting requirements) and in 40 CFR Part 75 **SUBPART H** (relating to continuous emission monitoring). For purposes of complying with these requirements, the definitions in § 145.2 and in 40 CFR 72.2 (relating to definitions) 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 (relating to definitions). **THE OWNER AND OPERATOR OF A UNIT THAT IS NOT A NO_x BUDGET UNIT BUT THAT IS MONITORED UNDER 40 CFR SECTION 75.72(b)(2)(ii) SHALL COMPLY WITH THE MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR A NO_x BUDGET UNIT UNDER THIS SUBCHAPTER.**

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

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

(ii) Install the monitoring systems for monitoring heat input**. [, if required under § 145.76 (relating to petitions) for developing NO_x allowance allocations.]**

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

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

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

(2) *Compliance dates.* The owner or operator shall meet the requirements of paragraph (1)(i)–(iii) on or before the following dates and shall 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 § **145.43(a) OR (c)** [145.55(d)] (relating to banking) shall comply with the requirements of this section and §§ 145.71–145.76 by May 1, 2000 **EXCEPT THAT COMPLIANCE WITH THE PROVISION OF §§ 123.108 MAY BE USED AS AN ALTERNATIVE MONITORING METHOD FOR THE 2000 CONTROL PERIOD**. **IF THE OWNER OR OPERATOR OF A NO_x BUDGET UNIT FAILS TO MEET THIS DEADLINE, HE OR SHE IS NOT ELIGIBLE TO APPLY FOR EARLY REDUCTION CREDITS UNDER § 145.43(a) OR (c) AND IS SUBJECT TO THE DEADLINE UNDER SUBPARAGRAPH (2)(ii).**

(ii) Except for NO_x budget units under subparagraph (i), NO_x budget units under § 145.4 (relating to applicability) that commence operation before January 1, 2002,

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

(iii) NO_x budget units under § 145.4**(a)(1)** that commence operation on or after January 1, 2002, and that report on an annual basis under § 145.74(d) (relating to recordkeeping and reporting) shall comply with the requirements of this section and §§ 145.71–145.76 by the later of the following dates:

(A) May 1, 2002.

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

(I) One hundred eighty days after the date on which the unit commences operation

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

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

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

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

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

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

(v) FOR THE OWNER OR OPERATOR OF A NO_x BUDGET UNIT UNDER § 145.4(a)(2) THAT COMMENCES OPERATION ON OR AFTER JANUARY 1, 2002 AND THAT REPORTS ON AN ANNUAL BASIS UNDER § 145.72(d), BY THE LATER OF THE FOLLOWING DATES:

(I) MAY 1, 2002.

(II) 180 DAYS AFTER THE DATE ON WHICH THE UNIT COMMENCES OPERATION.

(vi) FOR THE OWNER OR OPERATOR OF A NO_x BUDGET UNIT UNDER § 145.4(a)(2) THAT COMMENCES OPERATION ON OR AFTER JANUARY 1, 2002 AND THAT REPORTS ON A CONTROL PERIOD BASIS UNDER § 145.72(d)(2)(ii), BY 180 DAYS AFTER THE DATE ON WHICH THE UNIT COMMENCES OPERATION, PROVIDED THAT THIS DATE IS DURING A CONTROL PERIOD. IF THIS DATE DOES NOT OCCUR DURING A CONTROL PERIOD, THE APPLICABLE DEADLINE IS MAY 1 IMMEDIATELY FOLLOWING THIS DATE.

(vii) [(v)] For a NO_x budget unit with a new stack or flue for which construction is completed after the applicable deadline under subparagraph (i), (ii), (iii)**, (iv), (v), OR (vi)** or §§ 145.80–145.88 **AND THAT REPORTS ON AN ANNUAL BASIS UNDER § 145.72(d)**, 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(viii) FOR THE OWNER OR OPERATOR OF A NO_x BUDGET UNIT THAT HAS A NEW STACK OR FLUE FOR WHICH CONSTRUCTION IS COMPLETED AFTER THE APPLICABLE DEADLINE UNDER

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

(ix) [(vi)] For a unit for which an application for a NO_x budget opt-in **APPROVAL [permit]** is submitted and not denied or withdrawn, the compliance dates specified under §§ 145.80–145.88.

(3) *Reporting data prior to initial certification.* **THE OWNER OR OPERATOR OF A NO_x BUDGET UNIT UNDER SUBPARAGRAPHS (2)(iii), (2)(iv), (2)(v), OR (2)(vi) SHALL DETERMINE, RECORD AND REPORT NO_x MASS EMISSIONS, HEAT INPUT RATE, AND ANY OTHER VALUES REQUIRED TO DETERMINE NO_x MASS EMISSIONS (E.G., NO_x EMISSION RATE AND HEAT INPUT RATE, OR NO_x CONCENTRATION AND STACK FLOW RATE) IN ACCORDANCE WITH 40 CFR § 75.70(g), FROM THE DATE AND HOUR THAT THE UNIT STARTS OPERATING UNTIL THE DATE AND HOUR ON WHICH THE CONTINUOUS EMISSION MONITORING SYSTEM, EXCEPTED MONITORING SYSTEM UNDER 40 CFR PART 75 APPENDIX D OR E, OR EXCEPTED MONITORING**

SYSTEM UNDER 40 CFR § 75.19 IS PROVISIONALLY CERTIFIED.

[(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 paragraph (2)(iii) or (iv) shall 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–for example, NO_x emission rate and heat input or NO_x concentration and stack flow–using the provisions of 40 CFR 75.70(g) (relating to NO_x mass emissions provisions), from the date and hour that the unit starts operating until all required certification tests are successfully completed.]

(4) *Prohibitions.*

(i) An 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)]** may not use an alternative monitoring system, alternative reference method or another alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 145.75.

(ii) An owner or operator of an NO_x budget unit or a non-NO_x budget unit **[monitored under 40 CFR 75.72(b)(2)(ii)]** may not operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of this subchapter and 40 CFR Part 75 except as provided for in 40 CFR 75.74 (relating to annual and ozone season monitoring and reporting requirements).

(iii) An owner or operator of an NO_x budget unit or a non-NO_x budget unit **[monitored under 40 CFR 75.72(b)(2)(ii)]** may not disrupt the continuous emission monitoring system, a portion thereof or another 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) An owner or operator of an NO_x budget unit or a non-NO_x budget unit **[monitored under 40 CFR 75.72(b)(2)(ii)]** may not 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 one of the following circumstances:

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

exemption under **§§ 145.4(b) OR** 145.5 (relating to **APPLICABILITY AND** retired unit exemption) 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.

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

§ 145.71. Initial certification and recertification procedures.

(a) The owner or operator of an 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 (relating to continuous emission monitoring), except that:

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

(2) For additional CEMS required under the common stack provisions in 40 CFR 75.72 (relating to determination of NO_x mass emissions), or for NO_x concentration CEMS used under 40 CFR 75.71(a)(2) (relating to specific provisions for monitoring NO_x emission rate and heat input for the purpose of calculating NO_x mass emissions), the owner or operator shall meet the requirements of subsection (b).

(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]** **THE** owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 (relating to optional SO_2, NO_x and CO_2 emissions calculation for low mass emissions unit) **OR THAT QUALIFIES TO USE AN ALTERNATIVE MONITORING SYSTEM UNDER 40 CFR PART 75 SUBPART E (RELATING TO ALTERNATIVE MONITORING SYSTEMS)** shall **COMPLY WITH**

THE FOLLOWING PROCEDURES, AS MODIFIED BY SUBSECTION (c) OR (d). [also meet the requirements of subsection (c) and the owner or operator of a unit that qualifies to use an alternative monitoring system under 40 CFR Part 75 Subpart E (relating to alternative monitoring systems) shall also meet the requirements of subsection (d).] 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 40 CFR Part 75 Subpart H (relating to NO_x mass emissions provisions) (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 (relating to certification and recertification procedures). The owner or operator shall ensure that the applicable certification tests are successfully completed by the deadlines specified in § 145.70(2) (relating to general monitoring requirements). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this **SUBCHAPTER [part]** in a location where no 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 **MAY [the Budget Administrator or Department determines]** significantly affect**[s]** the ability of

the system to accurately measure or record NO_x mass emissions or heat input **RATE** or to meet the requirements of 40 CFR 75.21 (relating to quality assurance and quality control requirements) or 40 CFR Part 75 Appendix B (relating to quality assurance and quality control), the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Whenever the owner or operator makes a replacement, modification or change to the flue gas handling system or the unit's operation that **MAY [the Budget Administrator or Department determines to]** significantly change the **STACK** 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 (relating to procedures notification).

(ii) *Certification application.* The NO_x authorized account representative shall submit to the Department **AND THE APPROPRIATE EPA REGIONAL OFFICE** a certification application for each monitoring system required under 40 CFR Part 75 Subpart H. A complete certification application shall include the

information specified in 40 CFR Part 75 Subpart H.

(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 subsection (b)(3)(ii). 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), if the Department does not invalidate the provisional certification by issuing a notice of disapproval **WITHIN 120 DAYS OF RECEIPT OF THE COMPLETE CERTIFICATION APPLICATION BY THE DEPARTMENT**.

(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 **WITHIN 120 DAYS** after receipt **[and review]** of the complete certification application under subparagraph (ii). If the Department does not issue the notice **WITHIN SUCH 120-DAY PERIOD**, 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, the Department will issue a written notice of approval of the certification application **WITHIN 120 DAYS OF RECEIPT**.

(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, 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). **THE 120-DAY REVIEW PERIOD SHALL NOT BEGIN PRIOR TO RECEIPT OF A COMPLETE CERTIFICATION APPLICATION.**

(C) *Disapproval notice.* If the certification application shows that any monitoring system or component thereof does not meet the performance

requirements of this section and §§ 145.70 and 145.72–145.76, 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 the 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 will not be considered valid quality-assured data beginning with the date and hour of provisional certification **(AS DEFINED UNDER 40 CFR § 75.20(a)(3))**. 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) (relating to out of control periods).

(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 (iv)(D), the following apply:

(A) The owner or operator shall substitute the following values, for each

hour of unit operation during the period of invalid data **SPECIFIED UNDER 40 CFR §§ 75.20(a)(4)(iii), 75.20(b)(5), 75.20(h)(4), OR 75.21(e) [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 **RATE** 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 40 CFR Part 75 Appendix A Section **2 [2.1]** (relating to instrument span).

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

(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, within 30 unit operating days after the date of issuance of the notice of disapproval.

(c) This subsection applies to 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 **AND NOT SUBJECT TO AN ACID RAIN EMISSION LIMITATION** shall meet the applicable general operating requirements of 40 CFR 75.10 (relating to general operating requirements) **AND [,]** the applicable requirements of 40 CFR 75.19**. [, and the applicable certification requirements of § 145.71,] THE OWNER OR OPERATOR OF SUCH A UNIT SHALL ALSO MEET THE APPLICABLE CERTIFICATION AND RECERTIFICATION PRECEDURES OF SUBSECTION (b),** except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program, as of one of the following dates:

(i) **FOR A UNIT THAT DOES NOT HAVE MONITORING EQUIPMENT INITIALLY CERTIFIED OR RECERTIFIED FOR THE NO_x BUDGET TRADING PROGRAM AS OF THE DATE ON WHICH THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE SUBMITS THE CERTIFICATION APPLICATION UNDER 40 CFR § 75.19, STARTING ON THE DATE OF SUCH SUBMISSION UNTIL THE COMPLETION OF THE PERIOD FOR THE DEPARTMENT'S REVIEW. [For a unit that commences operation**

before its compliance deadline under subsection (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.]

(ii) **FOR A UNIT THAT HAS MONITORING EQUIPEMENT INITIALLY CERTIFIED OR RECERTIFIED FOR THE NO_x BUDGET TRADING PROGRAM AS OF THE DATE ON WHICH THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE SUBMITS THE CERTIFICATION APPLICATION UNDER 40 CFR § 75.19 FOR THE UNIT AND THAT REPORTS DATA ON AN ANNUAL BASIS UNDER § 145.74(d), STARTING JANUARY 1 OF THE YEAR AFTER THE YEAR OF SUCH SUBMISSION UNTIL THE COMPLETION OF THE PERIOD FOR THE DEPARTMENT'S REVIEW. [For a unit that commences operation after its compliance deadline under subsection (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.]**

(iii) FOR A UNIT THAT HAS MONITORING EQUIPMENT INITIALLY CERTIFIED OR RECERTIFIED FOR THE NO_x BUDGET TRADING PROGRAM AS OF THE DATE ON WHICH THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE SUBMITS THE CERTIFICATION APPLICATION UNDER 40 CFR §75.19 FOR THE UNIT AND THAT REPORTS

ON A CONTROL SEASON BASIS UNDER § 145.74(d), STARTING MAY 1 OF THE CONTROL PERIOD AFTER THE YEAR OF SUCH SUBMISSION UNTIL THE COMPLETION OF THE PERIOD FOR THE DEPARTMENT'S REVIEW.

(d) This subsection applies to certification/recertification procedures for alternative monitoring systems. The NO_x authorized account representative representing the owner or operator of each unit **NOT SUBJECT TO AN ACID RAIN EMISSIONS LIMITATION** applying to monitor using an alternative monitoring system approved by the **NO_x** Budget Administrator under 40 CFR Part 75 Subpart E (relating to alternative monitoring systems) 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) *Quality assurance requirements.* Whenever a monitoring system fails to meet the quality assurance **OR DATA VALIDATION** requirements of 40 CFR Part 75 **[Appendix B]** (relating to quality assurance and quality control procedures), data shall be substituted using the applicable procedures in 40 CFR Part 75 Subpart D, Appendix D or Appendix E (relating to missing data substitution procedures; optional SO_2 emissions data protocol for gas-fired and oil-fired units; and optional NO_x emissions estimation protocal for gas-fired peaking units and oil-

fired peaking units).

(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 (relating to initial certification and recertification procedures) 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 the 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 will 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 (relating to notification), 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 (relating to construction, modification, reactivation and operation of sources), the NO_x authorized account representative shall comply with the recordkeeping and reporting requirements in this section and with the requirements of § 145.10(e) (relating to authorization and responsibilities of the NO_x authorized account representative).

(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 40 CFR Part 75 Subpart F or G (relating to recordkeeping requirements; and reporting requirements) and which includes data and information required under this subchapter or 40 CFR Part 75 Subpart H (relating to NO_x mass emissions provisions) is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72 (relating to permits regulation), the submission shall 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 (relating to monitoring plan), except that the monitoring plan shall also include all of the information required by 40 CFR Part 75 Subpart H.

(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 40 CFR Part 75 Subpart H.

(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 (relating to initial certification and recertification procedures) including the information required under 40 CFR Part 75 Subpart H.

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

(1) NO_x budget units **SUBJECT TO AN ACID RAIN EMISSION LIMITATION** shall 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 one of the following:

(i) For units that elect to comply with the early reduction credit provisions under §

145.43 [145.55] (relating to banking), the calendar quarter that includes the date of initial provisional certification under **§**§ 145.71(b)(3)(iii) **OR 145.71(c)**. Data shall be **RECORDED AND** reported from the date and hour corresponding to the date and hour of provisional certification.

(ii) For units commencing operation **ON OR BEFORE [prior to]** May 1, 2002 **AND THAT IS NOT SUBJECT TO SUBPARAGRAPH (d)(1)(i)**, **[that are not required to certify monitors by May 1, 2000, under § 145.70(2)(i) (relating to general monitoring requirements),]** the earlier of the calendar quarter that includes the date of initial provisional certification under **§**§ 145.71(b)(3)(iii) or **145.71(c) 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.

(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) IF A NO_x BUDGET UNIT IS NOT SUBJECT TO AN ACID RAIN EMISSION LIMITATION, THEN THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE SHALL DO EITHER OF THE FOLLOWING:

(i) MEET ALL THE REQUIREMENTS OF 40 CFR PART 75 RELATED TO MONITORING AND REPORTING NO_x MASS EMISSIONS DURING THE ENTIRE YEAR AND MEET THE REPORTING DEADLINES SPECIFIED IN PARAGRAPH (d)(1).

(ii) SUBMIT QUARTERLY REPORTS COVERING THE PERIOD MAY 1 THROUGH SEPTEMBER 30 OF EACH YEAR AND INDLUDING THE DATA DESCRIBED IN 40 CFR § 75.74(c)(6). THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE SHALL SUBMIT A QUARTERLY REPORT FOR EACH CALENDAR QUARTER BEGINNING WITH:

(A) FOR UNITS THAT INTEND TO APPLY OR APPLIES FOR EARLY REDUCTION CREDITS UNDER SECTION 145.43 (RELATED TO COMPLIANCE SUPPLEMENT POOL), THE CALENDAR QUARTER THAT INCLUDES THE DATE OF INITIAL PROVISIONAL CERTIFICATION UNDER SECTIONS 145.71(b)(3)(iii) (RELATED TO INITIAL CERTIFICATION AND RECERTIFICATION PROCEDURES) AND 145.71(c). DATA SHALL BE RECORDED AND REPORTED FROM THE DATE AND HOUR OF PROVISIONAL CERTIFICATION; OR

(B) FOR UNITS COMMENCING OPERATION ON OR BEFORE

MAY 1, 2002 AND THAT IS NOT SUBJECT TO SUBSECTION (d)(2)(i), THE CALENDAR QUARTER COVERING MAY 1 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 INITIAL PROVISIONAL CERTIFICATION UNDER §§ 145.71(b)(3)(iii) OR 145.71(c) OR THE FIRST HOUR OF MAY 1, 2002; OR

(C) FOR UNITS THAT COMMENCE OPERATION AFTER MAY 1, 2002 AND DURING A CONTROL PERIOD, THE CALENDER QUARTER IN WHICH THE UNIT COMMENCES OPERATION. DATA SHALL BE REPORTED FROM THE DATE AND HOUR CORRESPONDING TO WHEN THE UNIT COMMENCED OPERATION; OR

(D) FOR UNITS THAT COMMENCE OPERATION AFTER MAY 1, 2002 AND NOT DURING A CONTROL PERIOD, THE CALENDAR QUARTER COVERING THE FIRST CONTROL PERIOD AFTER THE UNIT COMMENCES OPERATION. DATA SHALL BE REPORTED FROM THE EARLIER OF THE DATE AND HOUR CORRESPONDING TO THE DATE AND HOUR OF INITIAL PROVISIONAL CERTIFICATION UNDER §§ 145.71(b)(3)(iii) OR 145.71(c) OR THE FIRST HOUR OF MAY 1 OF

THE FIRST CONTROL PERIOD AFTER THE UNIT COMMENCES OPERATION.

(3) [(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 40 CFR Part 75 Subpart H and 40 CFR 75.64 (relating to quarterly reports).

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

(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 40 CFR Part 75 Subpart H for each NO_x budget unit (or group of units using a common stack).

(4) [(3)] 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 the following conditions have been met:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subchapter and 40 CFR Part 75, including the quality assurance procedures and specifications.

(ii) For a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1) (relating to units with add-on emission controls), the add-on emission controls were operating within the range of parameters listed in the **QUALITY ASSURANCE/QUALITY CONTROL PROGRAM UNDER 40 CFR PART 75 APPENDIX B [monitoring plan]** and the substitute values do not systematically underestimate NO_x emissions.

(iii) For a unit that is reporting on a control period basis under **[this]** subsection **(d)(2)(ii)**, the NO_x emission rate and NO_x concentration values substituted for missing data under 40 CFR Part 75 Subpart D (relating to missing data substitution procedures) are calculated using only values from a control period and do not systematically underestimate NO_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 (relating to petitions to the Administrator) to the Administrator requesting approval to apply an alternative to any

requirement of this section and §§ 145.70–145.74 and 145.76.

(b) **[(1)]** Application of an alternative to any requirement of this section and §§ 145.70–145.74 and 145.76 is in accordance with this section and **§§ 145.70 – 145.74 AND** 145.76 only to the extent that the petition is approved by the Administrator **UNDER 40 CFR § 75.66**.

[(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 (relating to determination of NO_x mass emissions), the petition is governed by subsection (b).

(b) The NO_x authorized account representative of an NO_x budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 (relating to petitions to the Administrator) to the Department and the Administrator requesting approval to apply an alternative to any requirement of this section and §§ 145.70–145.74 and 145.76.

(1) The NO_x authorized account representative of an 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) (relating to specific provisions for monitoring NO_x emission rate and

heat input for the purpose of calculating NO_x mass emissions).

(2) Application of an alternative to any requirement of this section and §§ 145.70–145.74 and 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**S** and report**S** 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 (relating to continuous emission monitoring).

[(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 (relating to banking).]

OPT-IN PROCESS

§ 145.80. Applicability for opt-in sources.

A unit that is not a NO_x budget unit under § 145.4**(a)** (relating to applicability), **IS NOT A UNIT EXEMPT UNDER § 145.4(b),** vents all of its emissions to a stack, and is operating, may qualify, under this section and §§ 145.81–145.88 (relating to opt-in process), to become a NO_x budget opt-in source. A unit that is an NO_x budget unit **UNDER § 145.4(a)**, is covered by a retired unit exemption under **§§ 145.4(b) OR** 145.5 (relating to retired unit exemption) that is in effect, or is not operating is not eligible to become an NO_x budget opt-in **UNIT [source]**.

§ 145.81. Opt-in source general provisions.

Except as otherwise provided, a NO_x budget opt-in **UNIT [source]** shall be treated as a NO_x budget unit for purposes of applying §§ 145.1–145.76.

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

A unit for which an application for an NO_x budget opt-in **APPROVAL [permit]** is submitted **[and not denied or withdrawn]**, or an NO_x budget opt-in **UNIT [source]**, located at the same source as one or more NO_x budget units, shall have the same NO_x authorized account representative as the NO_x budget units.

§ 145.83. Applying for an NO_x budget opt-in APPROVAL [permit].

To apply for **A [an initial]** NO_x budget opt-in **APPROVAL [permit]**, the NO_x authorized account representative of a unit qualified under § 145.80 (relating to applicability for opt-in

sources) may submit the following to the Department at any time, except as provided under § 145.86(g) (relating to opt-in source withdrawal from NO_x budget trading program):

(1) A complete NO_x budget **OPT-IN APPROVAL** **[permit]** application **[under § 145.22 (relating to information requirements for NO_x budget permit applications)]** **CONTAINING THE FOLLOWING:**

(i) IDENTIFICATION OF THE 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.

(ii) IDENTIFICATION OF EACH OPT-IN UNIT AT THE SOURCE.

(iii) THE STANDARD REQUIREMENTS UNDER § 145.6 (RELATING TO STANDARD REQUIREMENTS).

(iv) THE FOLLOWING CERTIFICATION STATEMENTS BY THE NO_x AUTHORIZED ACCOUNT REPRESENTATIVE:

(A) "I CERTIFY THAT EACH UNIT FOR WHICH THIS APPLICATION IS SUBMITTED UNDER §§ 145.80-145.88 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."

(B) IF THE APPLICATION IS FOR AN INITIAL NO_x BUDGET OPT-IN APPROVAL, "I CERTIFY THAT EACH UNIT FOR WHICH THIS APPROVAL APPLICATION IS SUBMITTED UNDER §§ 145.80 – 145.88 IS CURRENTLY OPERATING, AS THAT TERM IS DEFINED UNDER § 145.2."

(2) A monitoring plan submitted in accordance with §§ 145.70–145.76 (relating to recordkeeping and reporting requirements).

(3) A complete account certificate of representation under § 145.13 (relating to account certificate of representation), 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 **APPROVAL [permit]** for a unit for which an **[initial]** application for a NO_x budget opt-in **APPROVAL [permit]** under § 145.83 (relating to applying for an NO_x budget opt-in **APPROVAL [permit]**) is submitted, in accordance with **[§ 145.20 (relating to general NO_x budget trading program permit**

requirements) 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 an NO_x budget opt-in **APPROVAL [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 **RATE** of the unit are monitored and reported in accordance with §§ 145.70–145.76 (relating to recordkeeping and reporting requirements). A determination of sufficiency will not be construed as acceptance or approval of the unit's monitoring plan.

(2) *Plan sufficiency.* If the Department determines that the unit's monitoring plan is sufficient under paragraph (1) and after completion of monitoring system certification under §§ 145.70–145.76, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with §§ 145.70–145.76 for one full control period during which monitoring system availability is not less than 90% 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 this requirement, the unit shall be treated as an NO_x budget unit prior to issuance of a NO_x budget opt-in **APPROVAL [permit]** covering the unit.

(3) *Base line heat rate.* 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 **POUNDS [lb]**) for the control period divided by the unit's baseline heat **INPUT [rate]**.

(4) ***PROPOSED APPROVAL*** **[*Draft permit*]**. After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraph (3), the Department will **PROPOSE APPROVAL OF THE APPLICATION [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 shall 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.]

(5) [(6)] *Issuance* **[*of draft*]** *NO_x budget opt-in* ***APPROVAL*** **[*permit*]**. **[If the NO_x authorized account representative confirms the intention to opt in the unit under paragraph (5), the]** **THE** Department will issue the **[draft]** NO_x budget opt-in **APPROVAL IF THE UNIT MEETS ALL THE APPLICABLE REQUIRMENTS OF THIS SUBCHAPTER [permit] [in accordance with § 145.20]**.

(6) [(7)] *Nonqualification of unit.* Notwithstanding paragraphs (1)– **(5) [(6)]**, if at any

time before issuance of a **[draft]** NO_x budget opt-in **APPROVAL [permit]** for the unit, the Department determines that the unit does not qualify as an NO_x budget opt-in source under § 145.80 (relating to applicability for opt-in sources), the Department will issue a **[draft]** denial of an NO_x budget opt-in **APPROVAL [permit]** for the unit **[in accordance with § 145.20]**.

(7) [(8)] *Withdrawal of application for an NO_x budget opt-in **APPROVAL** [**permit**].* A NO_x authorized account representative of a unit may withdraw its application for a NO_x budget opt-in **APPROVAL [permit]** under § 145.83 at any time prior to the issuance of the final NO_x budget opt-in **APPROVAL [permit]**. Once the application for a NO_x budget opt-in **APPROVAL [permit]** is withdrawn, a NO_x authorized account representative wanting to reapply shall submit a new application for a NO_x Budget **OPT-IN APPROVAL [permit]** under § 145.83.

(8) [(9)] *Effective date.* The effective date of the initial NO_x budget opt-in **APPROVAL [permit]** is May 1 of the first control period starting after the issuance of the initial NO_x budget opt-in **APPROVAL [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 **APPROVAL [permit]**.

§ 145.85. NO_x budget opt-in APPLICATION [permit] contents.

(a) Each NO_x budget opt-in **APPROVAL [permit]** will contain all elements required for a

complete NO_x budget opt-in **APPROVAL [permit]** application under § **145.83 (RELATING TO APPLYING FOR AN NO_x BUDGET OPT-IN APPROVAL) [145.22 (relating to information requirements for NO_x budget permit applications)]**.

(b) Each NO_x budget opt-in **APPROVAL [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 **UNIT [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 subsection (a) may withdraw from the NO_x Budget Trading Program and the NO_x budget opt-in **APPROVAL [permit]** may be terminated under subsection (e), the following conditions shall 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 (relating to

compliance certification report).

(2) If the NO_x budget opt-in **UNIT [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 **UNIT'S [source's]** compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in **UNIT [source]** is located, the full amount required under § 145.54(d) (relating to compliance) 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 **UNIT'S [source's]** compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in **UNIT [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 (relating to NO_x allowance allocations to opt-in units) for any control period for which the withdrawal is to be effective. The **NO_x BUDGET** Administrator will close the NO_x budget opt-in **UNIT'S [source's]** compliance account **[and will establish,]** and transfer any remaining allowances to**[,]** a new general account **SPECIFIED BY[for]** the owners and operators of the NO_x budget opt-in **UNIT [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) *Withdrawal from program.* A NO_x budget opt-in **UNIT [source]** that withdraws from the NO_x Budget Trading Program shall comply with the requirements under the NO_x Budget Trading Program concerning all years for which the NO_x budget opt-in **UNIT [source]** was a NO_x budget opt-in **UNIT [source]**, even if the 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 **UNIT [source]** of the acceptance of the withdrawal of the NO_x budget opt-in **UNIT [source]** as of a specified effective date that is after the 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 **UNIT [source]** that the NO_x budget opt-in **UNIT'S [source's]** request to withdraw is denied. If the NO_x budget opt-in **UNIT'S [source's]** request to withdraw is denied, the NO_x budget opt-in **UNIT [source]** shall remain subject to the requirements for a NO_x budget opt-in **UNIT [source]**.

(e) ***APPROVAL*** **[*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 **OPT-IN APPROVAL [permit]** covering the NO_x budget opt-in **UNIT [source]** to terminate the NO_x budget opt-in **APPROVAL [permit]** as of the effective date specified under subsection (d)(1). A NO_x budget opt-in **UNIT [source]** shall continue to be a NO_x budget opt-in **UNIT [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 **UNIT [source]** withdraws from the NO_x Budget Trading Program and its NO_x budget opt-in **APPROVAL [permit]** is terminated under this section, the NO_x authorized account representative may not submit another application for a NO_x budget opt-in **APPROVAL [permit]** under § 145.83 (relating to applying for a NO_x budget opt-in **APPROVAL [permit]**) for the unit prior to the date that is 4 years after the date on which the terminated NO_x budget opt-in **APPROVAL [permit]** became effective.

§ 145.87. Opt-in UNIT [source] change in regulatory status.

(a) *Notification.* When a NO_x budget opt-in **UNIT [source]** becomes a NO_x budget unit under § 145.4**(a)** (relating to applicability), the NO_x authorized account representative shall notify in writing the Department and the Administrator of the change in the NO_x budget opt-in **UNIT'S**

[source's] regulatory status, within 30 days of the change.

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

(1) *Units with active applications.*

(i) *Revision of* ***APPROVAL*** **[*permit*]**. When the NO_x budget opt-in **UNIT [source]** becomes a NO_x budget unit under § 145.4**(a)**, the Department will revise the NO_x budget opt-in **UNIT'S [source's]** NO_x budget opt-in **APPROVAL [permit]** to meet the requirements of **THIS SUBCHAPTER [an NO_x budget permit under § 145.23 (relating to NO_x budget permit contents)]** as of an effective date that is the date on which the NO_x budget opt-in **UNIT [source]** becomes an NO_x budget unit under § 145.4**(a)**.

(ii) *Compliance account.*

(A) The NO_x Budget Administrator will deduct from the compliance account for the NO_x budget unit under subparagraph (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 the following:

(I) NO_x allowances allocated to the NO_x budget unit (as a NO_x

budget opt-in **UNIT [source])** under § 145.88 (relating to NO_x allowance allocations to opt-in units) for any control period after the last control period during which the unit's NO_x budget opt-in **APPROVAL [permit]** was effective.

(II) If the effective date of the NO_x budget **APPROVAL [permit]** revision under subparagraph (i) is during a control period, the NO_x allowances allocated to the NO_x budget unit (as a NO_x budget opt-in **UNIT [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 **APPROVAL [permit]** revision under subparagraph (i), divided by the total number of days in the control period **AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE**.

(B) The NO_x authorized account representative shall ensure that the compliance account of the NO_x budget unit under subparagraph (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 clause (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 **APPROVAL [permit]** revised under subparagraph (i) is effective, the NO_x budget unit under subparagraph (i) will be treated, solely for purposes of NO_x allowance allocations under § 145.42 (relating to NO_x allowance allocations), as a unit that commenced operation on the effective date of the NO_x budget **APPROVAL [permit]** revision under subparagraph (i) and will be allocated NO_x allowances under § 145.42. **THE UNIT'S DEADLINE UNDER SECTION 145.84(b) FOR MEETING MONITORING REQUIREMENTS IN ACCORDANCE WITH SECTIONS 145.70 – 145.76 SHALL NOT BE CHANGED BY THE CHANGE IN THE UNIT'S REGULATORY STATUS OR BY THE REVISION OF THE NO_x BUDGET APPROVAL UNDER SUBPARAGRAPH (i).**

(B) Notwithstanding clause (A), if the effective date of the NO_x budget **APPROVAL [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 **APPROVAL [permit]** revision under subparagraph (i), divided by the total number of days in the control period**, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE**.

(2) *Units with expired **APPROVALS** [**permits**]*.

(i) When the NO_x authorized account representative of a NO_x budget opt-in **UNIT [source]** does not renew its NO_x budget opt-in **APPROVAL [permit]** under § 145.83 (relating to applying for a NO_x opt-in **APPROVAL [permit]**), 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 **UNIT [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 **UNIT [source]** under § 145.88 for any control period after the last control period for which the NO_x budget opt-in **APPROVAL [permit]** is effective. The NO_x authorized account representative shall ensure that the NO_x budget opt-in **UNIT'S [source's]**compliance account or the overdraft account of the NO_x budget source where the NO_x budget opt-in **UNIT [source]** is located includes the NO_x allowances necessary for completion of the 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 **UNIT'S [source's]**compliance account. If any NO_x allowances remain in the compliance account after completion of the deduction and any deduction under § 145.54 (relating to compliance), 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 **SPECIFIED BY [for]** the owners and operators of the NO_x budget opt-in **UNIT [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 **APRIL 1 [December 31]** immediately before the first control period for which the NO_x budget opt-in **APPROVAL [permit]** is effective, the Department will allocate NO_x allowances to the NO_x budget opt-in **UNIT [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 **APRIL 1 [December 31]**, after the first control period for which the NO_x budget opt-in **APPROVAL [permit]** is in effect, and **APRIL 1 [December 31]** of each year thereafter, the Department will allocate NO_x allowances to the NO_x budget opt-in **UNIT [source]**, and submit to the NO_x Allowance Tracking System allocations for the next control period, in accordance with subsection (b).

(3) THE DEPARTMENT WILL PUBLISH IN THE PENNSYLVANIA BULLETIN EACH DETERMINATION OF NO_x ALLOWANCE ALLOCATIONS UNDER PARAGRAPHS (1) AND (2) AND WILL PROVIDE AN OPPORTUNITY FOR SUBMISSION OF OBJECTIONS TO THE DETERMINATION. OBJECTIONS SHALL BE LIMITED TO ADDRESSING WHETHER THE DETERMINATION IS IN ACCORDANCE WITH SUBSECTION (b). BASED ON ANY SUCH OBJECTIONS, THE DEPARTMENT WILL ADJUST EACH DETERMINATION TO THE EXTENT NECESSARY TO ENSURE THAT IT IS IN ACCORDANCE WITH SUBSECTION (b).

(b) *Allocation procedures.* For each control period for which the NO_x budget opt-in **UNIT [source]** has an approved NO_x budget opt-in **APPROVAL [permit]**, the NO_x budget opt-in **UNIT [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 one of the following:

(i) The NO_x budget opt-in **UNIT'S [source's]** baseline heat input determined under § 145.84(c) (relating to opt-in process).

(ii) The NO_x budget opt-in **UNIT'S [source's]** heat input, as determined in accordance with §§ 145.70–145.76 (relating to recordkeeping and reporting requirements), for the control period in the year prior to the year of the control period for which the NO_x allocations are being calculated.

(2) The Department will allocate NO_x allowances to the NO_x budget opt-in **UNIT [source]** in an amount equaling the heat input (in mmBtu) determined under paragraph (1) multiplied by the lesser of one of the following:

(i) The NO_x budget opt-in **UNIT'S [source's]** baseline NO_x emissions rate (in lb/mmBtu) determined under § 145.84(c) **DIVIDED BY 2000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE**.

(ii) The most stringent State or Federal NO_x emissions limitation applicable to the NO_x budget opt-in **UNIT [source]** during the control period **DIVIDED BY 2000 LB/TON, AND ROUNDED TO THE NEAREST WHOLE NUMBER OF NO_x ALLOWANCES AS APPROPRIATE**.

EMISSION REDUCTION CREDIT PROVISIONS

§ 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. 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.]

(b) [(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.

(c) [(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– 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 this subchapter 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).

INTERSTATE POLLUTION TRANPORT REDUCTION REQUIREMENTS

§ 145.100. APPLICABILITY TO UPWIND STATES.

(a) THE PROVISIONS OF THIS SUBCHAPTER ARE APPLICABLE TO NO_x BUDGET UNITS LOCATED IN THE STATES OF OHIO, WEST VIRGINIA, VIRGINIA, MARYLAND, DELAWARE, NEW JERSEY, NEW YORK OR NORTH CAROLINA OR LOCATED IN WASHINGTON, D.C.

(b) THE NO_x TRADING PROGRAM BUDGET FOR EACH STATE FOR A CONTROL PERIOD WILL EQUAL THE TOTAL NUMBER OF TONS OF NO_x EMISSIONS

APPORTIONED TO THE NO_x BUDGET UNITS IN EACH STATE AS FOLLOWS:

STATE	ELECTRIC GENERATING UNITS	NON-ELECTRIC GENERATING UNITS
OHIO	45,432	4,103
WEST VIRGINIA	26,859	2,184
VIRGINIA	17,091	4,104
MARYLAND	14,519	1,013
DELAWARE	4,306	232
WASHINGTON, D.C	207	26
NORTH CAROLINA	31,212	2,329
NEW JERSEY	9,716	4,838
NEW YORK	16,081	156

(c) THE COMPLIANCE SUPPLEMENT POOL FOR EACH STATE IS:

STATE	ALLOWANCE
OHIO	22,301
WEST VIRGINIA	16,709
VIRGINIA	5,504
MARYLAND	3,882

DELAWARE	**168**
NEW JERSEY	**1,550**
NEW YORK	**1,379**
NORTH CAROLINA	**10,737**
WASHINGTON, D.C.	**0**

(d) ANY PROVISION TO THE CONTRARY NOTWITHSTANDING, THIS SECTION IS NOT APPLICABLE IF ONE OF THE FOLLOWING APPLIES:

(1) NO_x BUDGET UNITS IN THE STATE OR WASHINGTON, D.C. ARE REQUIRED TO COMPLY WITH AN EMISSION LIMITATION ESTABLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY UNDER SECTION 126 OF THE CLEAN AIR ACT.

(2) THE STATE OR WASHINGTON, D.C. SUBMITS A STATE IMPLEMENTATION PLAN THAT THE ENVIRONMENTAL PROTECTION AGENCY EXPRESSLY DETERMINES MEETS THE REQUIREMENTS OF SECTION 110(a)(2)(D)(i)(I) OF THE CLEAN AIR ACT.

(3) THE ENVIRONMANTAL PROTECTION AGENCY PROMULGATES A FEDERAL IMPLEMENTATION PLAN FOR THE STATE OR WASHINGTON, D.C. TO EXPRESSLY MEET THE REQUIREMENTS OF SECTION 110(a)(2)(D)(i)(I) OF THE CLEAN AIR ACT.