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Form #6

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Department of Environmental Protection-Division of Air Quality TITLE NUMBER: 45

AMENDMENT TO AN EXISTING RULE: YES ____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: ____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: "NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB2663

SECTION 64-3-1(i), PASSED ON April 14, 2001

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: July 1, 2001

Michael Allen

Authorized Signature

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 45
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

SERIES 1
NO_X BUDGET TRADING PROGRAM AS A MEANS OF CONTROL AND REDUCTION OF NITROGEN OXIDES

§45-1-1. General.

1.1. Scope. -- This rule establishes:

1.1.a. General provisions and the definitions, applicability, permitting, allowance, excess emissions, monitoring and opt-in provisions for a state NO_X Budget Trading Program as a means of control and reduction of nitrogen oxides (NO_X), an ozone precursor. The Director of the Division of Environmental Protection authorizes the Administrator of the U.S. Environmental Protection Agency to assist the Director in implementing the state NO_X Budget Trading Program as a participant in the federal NO_X Budget Trading Program by carrying out the functions set forth for the Administrator in the requirements of sections 4. through 88. of this rule and 40 CFR Part 51. This rule follows the intent of 40 CFR Part 96 for applicable source categories.

1.1.b. Reserved.

1.1.c. General provisions and the definitions, applicability, standard requirements, reporting, monitoring, recordkeeping and exemption requirements for emissions of NO_X from cement manufacturing kilns set forth in section 100. Such cement manufacturing kilns are not eligible for the NO_X Budget Trading Program as provided in sections 4. through 88.

1.2. The owner or operator of a fossil fuel-fired stationary boiler, combustion turbine, combined cycle system or cement manufacturing kiln shall comply with applicable requirements of this rule.

1.3. Authority. -- W.Va. Code §§22-5-1 et seq.

1.4. Filing Date. -- June 8, 2001.

1.5. Effective Date. -- July 1, 2001.

§45-1-2. Definitions.

2.1. "Account number" means the identification number given by the Administrator to each NO_X Allowance Tracking System account.

2.2. "Acid Rain emissions limitation" means, as defined in 40 CFR 72.2 a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the CAA.

2.3. "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

2.4. "Allocate or allocation" means the determination by the Director or the Administrator of the number of NO_X allowances to be initially credited to a NO_X Budget unit or an allocation set-aside.

2.5. "Automated data acquisition and handling system" or "DAHS" means that component of the CEMS or other emissions monitoring system approved for use under sections 70. through 76., 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 sections 70. through 76.

2.6. "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam or other medium.

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

2.8. "Clinker" means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

2.9. "Combined cycle system" means 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.

2.10. "Combustion turbine" means 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.

2.11. "Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in subsection 4.1., section 5. or sections 80. through 88. for a unit that is a NO_X Budget unit under subsection 4.1. on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed or repowered. Except as provided in subsection 4.1., section 5. or sections 80. through 88., for a unit that is not a NO_X Budget unit under subsection 4.1. on the date the unit commences commercial operation, the date the unit becomes a NO_X Budget unit under subsection 4.1. shall be the unit's date of commencement of commercial operation.

2.12. "Commence operation" means to have begun any mechanical, chemical or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in subsection 4.1., section 5. or sections 80. through 88., for a unit that is a NO_X Budget unit under subsection 4.1. on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed or repowered. Except as provided in subsection 4.1., section 5. or sections 80. through 88., for a unit that is not a NO_X Budget unit under subsection 4.1. on the date of commencement of operation, the date the unit becomes a NO_X Budget unit under subsection 4.1. shall be the unit's date of commencement of operation.

2.13. "Common stack" means a single flue through which emissions from two or more units are exhausted.

2.14. "Compliance account" means a NO_X Allowance Tracking System account, established by the Administrator for a NO_X Budget unit under sections 50. through 57., 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 an ozone season for the purpose of meeting the unit's NO_X Budget emissions limitation.

2.15. "Continuous emission monitoring system" or "CEMS" means the equipment required under sections 70. through 76. to sample, analyze, measure and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, to the extent consistent with sections 70. through 76. and 40 CFR Part 75, in a continuous emission monitoring system:

2.15.a. Flow monitor;

2.15.b. NO_X pollutant concentration monitors;

2.15.c. Diluent gas monitor (oxygen or carbon dioxide);

2.15.d. A continuous moisture monitor; and

2.15.e. An automated data acquisition and handling system.

2.16. Reserved.

2.17. "Director" means the director of the division of environmental protection or such other person to whom the Director has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or §§22-1-8.

2.18. Reserved.

2.19. "Electricity for sale under firm contract to the grid" means 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.

2.20. Reserved.

2.21. "Emissions" means air pollutants exhausted

from a unit or source into the atmosphere, as measured, recorded and reported to the Director or Administrator by the NO_X authorized account representative and as determined by the Administrator in accordance with sections 70. through 76.

2.22. Reserved.

2.23. "Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

2.24. "Excess emissions" means any tonnage of nitrogen oxides emitted by a NO_X Budget unit during an ozone season that exceeds the NO_X Budget emissions limitation for the unit.

2.25. "Fossil fuel" means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

2.26. "Fossil fuel-fired" means, with regard to a unit:

2.26.a. 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;

2.26.b. 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; or

2.26.c. For units that commence operation on or after January 1, 1997:

2.26.c.1. 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

2.26.c.2. 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.

2.27. "General account" means a NO_X Allowance Tracking System account, established under sections 50. through 57., that is not a compliance account or an overdraft account.

2.28. "Generator" means a device that produces electricity.

2.29. "Heat input" means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded and reported to the Administrator by the NO_X authorized account representative and as determined by the Administrator in accordance with sections 70. through 76. and does not include the heat derived from preheated combustion air, recirculated flue gases or exhaust from other sources.

2.30. "Heat input rate" means 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.

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

2.32. Reserved.

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

2.33.a. For the life of the unit;

2.33.b. For a cumulative term of no less than 30 years, including contracts that permit an election for

early termination; or

2.33.c. For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

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

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

2.36. "Low-NO_X burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing and establish fuel-rich zones for initial combustion.

2.37. "Maintenance operation" means the use of an emergency standby engine and fuel system during testing, repair and routine maintenance to verify its readiness for emergency standby use.

2.38. "Malfunction" means any sudden, infrequent and not reasonably preventable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

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

2.40. "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value 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 should be reported in accordance with 40 CFR Part 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO_2) or the minimum oxygen concentration (in percent O_2).

2.41. "Maximum potential NO_X emission rate" means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of Appendix F of 40 CFR Part 75, using the maximum potential concentration of NO_X under section 2 of Appendix A of 40 CFR Part 75 and either the maximum oxygen concentration (in percent O_2) or the minimum carbon dioxide concentration (in percent CO_2), under all operating conditions of the unit except for unit startup, shutdown and upsets.

2.42. "Maximum rated hourly heat input" means 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.

2.43. "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO_X emissions through:

2.43.a. Burning part of the fuel at a lower temperature; and

2.43.b. Reducing conditions at the solid waste injection point that may destroy some of the NO_X formed upstream in the kiln burning zone.

2.44. "Monitoring system" means any monitoring system that meets the requirements of sections 70. through 76., including a continuous emissions monitoring system, an excepted monitoring system or an alternative monitoring system.

2.45. "Most stringent state or federal NO_X emissions limitation" means 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.

2.46. "Nameplate capacity" means the maximum electrical generating output (in MW_e) 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.

2.47. "Non-title V permit" means a federally enforceable permit administered by the Director pursuant to the CAA and regulatory authority under the CAA, other than title V of the CAA and 40 CFR Part 70 or 40 CFR Part 71.

2.48. "NO_X allowance" means a limited authorization under the NO_X Budget Trading Program to emit up to one ton of nitrogen oxides during the ozone season of the specified year or of any year thereafter, except as provided under subsection 54.6. No provision of the NO_X Budget Trading Program, the NO_X Budget permit application, the NO_X Budget permit, or an exemption under subdivision 4.2.a. or section 5. and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization, which does not constitute a property right. For purposes of all sections of this rule, except sections 40., 41., 42., 43. or 88., "NO_X allowance" also includes an authorization to emit up to one ton of nitrogen oxides during the ozone season of the specified year or of any year thereafter in accordance with a Federal NO_X Budget Trading Program established by the Administrator under 40 CFR Part 97.

2.49. "NO_X allowance deduction" or "deduct NO_X allowances" means the permanent withdrawal of NO_X allowances by the Administrator 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 an ozone season, determined in accordance with sections 70. through 76. and sections 50. through 57. or for any other NO_X allowance withdrawal requirement under this rule.

2.50. "NO_X allowances held" or "hold NO_X allowances" means the NO_X allowances recorded by the Administrator or submitted to the Administrator for recordation, in accordance with sections 50. through 57. and sections 60. through 62., in a NO_X Allowance Tracking System account.

2.51. "NO_X Allowance Tracking System" means the system by which the Administrator records allocations, deductions and transfers of NO_X allowances under the NO_X Budget Trading Program.

2.52. "NO_X Allowance Tracking System account" means an account in the NO_X Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring or deducting of NO_X allowances.

2.53. "NO_X allowance transfer deadline" means 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 ozone season immediately preceding such deadline.

2.54. "NO_X authorized account representative" means, for a NO_X Budget source or NO_X Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_X Budget units at the source, in accordance with sections 10. through 14., 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 sections 50. through 57., to transfer or otherwise dispose of NO_X allowances held in the general account.

2.55. "NO_X Budget emissions limitation" means, for a NO_X Budget unit, the tonnage equivalent of the NO_X allowances available for compliance deduction for the unit under subsections 54.1., 54.2., 54.5. and 54.6. in an ozone season adjusted by any deductions of such NO_X allowances to account for actual heat input under subsection 42.5. for the ozone season or to account for excess emissions for a prior ozone season under subsection 54.4. or to account for withdrawal from the NO_X Budget Program or for a change in regulatory status for a NO_X Budget opt-in source under sections 86. or 87.

2.56. "NO_X Budget opt-in permit" means a NO_X Budget permit covering a NO_X Budget opt-in source.

2.57. "NO_X Budget opt-in unit" means a unit that has been elected to become a NO_X Budget unit under the NO_X Budget Trading Program and whose NO_X Budget opt-in permit has been issued and is in effect under sections 80. through 88.

2.58. "NO_X Budget permit" means the legally binding and federally enforceable written document or portion of such document, issued by the Director, 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.

2.59. "NO_X Budget source" means a source that includes one or more NO_X Budget units.

2.60. "NO_X Budget Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator pursuant to 40 CFR 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

2.61. "NO_X Budget unit" means a unit that is subject to the NO_X Budget emissions limitation under sections 4. or 80.

2.62. "Operating" means, with regard to a unit under paragraph 22.1.d.2. and section 80., having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_X Budget permit under subsection 83.1. 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 part 40 CFR Part 75 during that 6-month period.

2.63. "Operator" means any person who operates, controls or supervises a NO_X Budget unit, a NO_X Budget source or unit for which an application for a NO_X Budget opt-in permit under section 83. is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system or plant manager of such a unit or source.

2.64. "Opt-in" means to be elected to become a NO_X Budget unit under the NO_X Budget Trading Program through a final, effective NO_X Budget opt-in permit under sections 80. through 88.

2.65. Reserved.

2.66. "Overdraft account" means the NO_X Allowance Tracking System account, established by the Administrator under sections 50. through 57. for each NO_X Budget source where there are two or more NO_X Budget units.

2.67. "Owner" means any of the following persons:

2.67.a. Any holder of any portion of the legal or equitable title in a NO_X Budget unit or in a unit for which an application for a NO_X Budget opt-in permit under section 83. is submitted and not denied or withdrawn;

2.67.b. Any holder of a leasehold interest in a NO_X Budget unit or in a unit for which an application for a NO_X Budget opt-in permit under section 83. is submitted and not denied or withdrawn;

2.67.c. Any purchaser of power from a NO_X Budget unit or from a unit for which an application for a NO_X Budget opt-in permit under section 83. is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_X Budget unit or the unit for which an application for a NO_X Budget opt-in permit under section 83. is submitted and not denied or withdrawn; or

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

2.68. "Ozone season" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

2.69. "Peak load" means the maximum instantaneous operating load.

2.70. "Percent monitor data availability" means, for purposes of subdivision 43.1.a., total unit operating hours for which quality-assured data were recorded under sections 70. through 76. in an ozone season, divided by the total unit operating hours in the ozone season and multiplied by 100 percent.

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

2.72. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country and any firm, partnership or association of whatever nature.

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

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

2.75. "Potential electrical output capacity" means 33 percent of a unit's maximum design heat input.

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

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

2.78. "Receive or receipt of" means, when referring to the Director or the 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 Director or the Administrator in the regular course of business.

2.79. "Recordation, record or recorded" means, with regard to NO_X allowances, the movement of NO_X allowances by the Administrator from one NO_X Allowance Tracking System account to another, for purposes of allocation, transfer or deduction.

2.80. "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in Appendix A of 40 CFR Part 60.

2.81. Reserved.

2.82. "Serial number" means, when referring to NO_X allowances, the unique identification number assigned to each NO_X allowance by the Administrator under subsection 53.3.

2.83. "Shutdown" means:

2.83.a. The period of time a unit is cooled from its normal operating temperature to cold or ambient temperature; or

2.83.b. The cessation of operation of a Portland cement kiln for any purpose.

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

2.85. "Startup" means:

2.85.a. The period of time a unit is heated from cold or ambient temperature to its normal operating temperature as specified by the manufacturer; or

2.85.b. The setting in operation of a Portland cement kiln for any purpose.

2.86. "State" means one of the 48 contiguous states or a portion thereof or the District of Columbia that is specified in 40 CFR §52.34 and in which are located units for which the Administrator makes an effective finding under 40 CFR §52.34.

2.87. "State NO_X Budget Trading Program" means a nitrogen oxides air pollution control and emission reduction program established in accordance with this rule and pursuant to 40 CFR 51.121 as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

2.88. Reserved.

2.89. "Stoichiometric air/fuel ratio" means the air/fuel ratio where all fuel and all oxygen in the air/fuel mixture will be consumed.

2.90. "Submit or serve" means to send or transmit a document, information or correspondence to the person specified:

2.90.a. In person;

2.90.b. By United States Postal Service; or

2.90.c. By other means of dispatch or transmission and delivery. Compliance with any "submission," "service" or "mailing" deadline shall be determined by the date of dispatch, transmission or mailing and not the date of receipt.

2.91. "Title V operating permit" means a permit issued under 45CSR30.

2.92. "Title V operating permit regulations" means the regulations that the Director has issued and the Administrator has approved as meeting the requirements of 45CSR30.

2.93. "Ton" or "tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_X Budget emissions limitation, total tons for an ozone season shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with sections 70. through 76., with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

2.94. "Unit" means a fossil fuel-fired stationary boiler, combustion turbine or combined cycle system.

2.95. "Unit operating day" means a calendar day in which a unit combusts any fuel.

2.96. "Unit operating hour" or "hour of unit operation" means any hour (or fraction of an hour) during which a unit combusts any fuel.

2.97. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W.Va. Code §§22-5-1 et seq. and 40 CFR 72.2.

§45-1-3. Measurements, Abbreviations and Acronyms.

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

Btu - British thermal unit

hr - hour

kW - kilowatt electrical

kWh - kilowatt hour

lb - pounds

mmBtu - million Btu

MW_e - megawatt electrical

ton - 2000 pounds

TPH - tons per hour

CO_2 - carbon dioxide

NO_X - nitrogen oxides

O_2 - oxygen.

§45-1-4. NO_X Budget Trading Program Applicability.

4.1. The following units in West Virginia (as defined in section 2.) shall be designated NO_X Budget units, and any source that includes one or more such units shall be a NO_X Budget source, subject to the requirements of this rule:

4.1.a.1. Reserved.

4.1.a.2. Reserved.

4.1.a.3. Reserved.

4.1.b.1. 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 a firm contract to the electric grid.

4.1.b.2. 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 a firm contract to the electric grid.

4.1.b.3. For units that commence operation

on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that:

4.1.b.3.A. At no time serves a generator producing electricity for sale; or

4.1.b.3.B. At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of 25MW_e or less and has the potential to use no more than 50 percent of the potential electrical output capacity of the unit.

4.2.a. Notwithstanding subsection 4.1., a unit under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. that has a federally enforceable permit which includes a NO_X emission limitation restricting NO_X emissions during an ozone season to 25 tons or less and includes the special provisions in subdivision 4.2.d. shall be exempt from the requirements of the NO_X Budget Trading Program, except for the provisions of this subdivision, sections 2. and 3.; subsection 4.1.; section 7., sections 40. through 42., sections 50. through 57. and sections 60. through 62. The NO_X emission limitation under this subdivision shall restrict NO_X emissions during the ozone season by limiting unit operating hours. The restriction on unit operating hours shall be calculated by dividing 25 tons 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.

4.2.b. The exemption under subdivision 4.2.a. shall become effective as follows:

4.2.b.1. The exemption shall become effective on the date on which the NO_X emission limitation and the special provisions in the permit under subdivision 4.2.a. become final; or

4.2.b.2. If the NO_X emission limitation and the special provisions in the permit under subdivision 4.2.a. become final during an ozone season and after the first date on which the unit operates during such ozone season, then the exemption shall become effective on May 1 of such ozone season, 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 the special provisions do not apply to the unit as of such first date of operation, then the exemption under subdivision 4.2.a. shall become effective on October 1 of the year during which such NO_X emission limitation and the special provisions become final.

4.2.c. The Director will provide the Administrator written notice of the issuance of a federally enforceable permit under subdivision 4.2.a. for a unit under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. and, upon request by the Administrator, a copy of the permit.

4.2.d. Special provisions.

4.2.d.1. A unit exempt under subdivision 4.2.a. shall comply with the restriction on unit operating hours described in subdivision 4.2.a. during the ozone season in each year.

4.2.d.2. The Director will allocate NO_X allowances to the unit under subsections 41.1., 41.2., 41.3., 42.3. and subdivision 42.1.a. For each ozone season for which the unit is allocated NO_X allowances under subsections 41.1., 41.2., 41.3., 42.3. and subdivision 42.1.a.:

4.2.d.2.A. The owners and operators of the unit must specify a general account, in which the Director will record the NO_X allowances; and

4.2.d.2.B. After the Director records a NO_X allowance allocation under subsections 41.1., 41.2., 41.3., 42.3. and subdivision 42.1.a., the Director will deduct, from the general account under subparagraph 4.2.d.2.A., NO_X allowances that are allocated for the same or a prior ozone season as the NO_X allowances allocated to the unit under subsections 41.1., 41.2., 41.3., 42.3 and subdivision 42.1.a. and that equal the NO_X emission limitation (in tons of NO_X) on which the unit's exemption under subdivision 4.2.a. 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.

4.2.d.3. A unit exempt under subdivisions 4.2.a. and 4.2.b. shall report hours of unit operation during the ozone season in each year to the Director by November 1 of that year.

4.2.d.4. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under subdivision 4.2.a. shall retain, at the source that includes the unit, records demonstrating that the conditions of the federally enforceable permit under subdivision 4.2.a. 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 Director or the Administrator. The owners and operators bear the burden of proof that the unit met the restriction on unit operating hours.

4.2.d.5. The owners and operators, and to the extent applicable, the NO_X authorized account representative of a unit exempt under subdivision 4.2.a. shall comply with the requirements of the NO_X Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise or must be complied with, after the exemption takes effect.

4.2.d.6. On the earlier of the following dates, a unit exempt under subdivision 4.2.a. shall lose its exemption:

4.2.d.6.A. The date on which the restriction on unit operating hours described in subdivision 4.2.a. is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any ozone season starting in 2004; or

4.2.d.6.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 subdivision 4.2.a. during any ozone season starting in 2004.

4.2.d.7. A unit that loses its exemption in accordance with paragraph 4.2.d.6. shall be subject to the requirements of this rule. For the purpose of applying permitting requirements under sections 20. through 24., allocating allowances under sections 40. through 42., and applying monitoring requirements under sections 70. through 76., the unit shall be treated as commencing operation.

4.2.d.8. A unit that is exempt under subdivision 4.2.a. is not eligible to be a NO_X Budget opt-in unit under sections 80. through 88.

§45-1-5. Retired Unit Exemption.

5.1. This section applies to any NO_X Budget unit, other than a NO_X Budget opt-in unit, that is permanently retired.

5.2.a. Any NO_X Budget unit, other than a NO_X Budget opt-in unit, that is permanently retired shall be exempt from the NO_X Budget Trading Program, except for the provisions of this section, sections 2., 3., 4. and 7.; sections 40. through 42., sections 50. through 57. and sections 60. through 62.

5.2.b. The exemption under subsection 5.2.a. 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 sections 10. through 14.) shall submit a statement to the Director (and a copy of the statement to the Administrator) which states, in a format prescribed by the Director, that the unit is permanently retired and will comply with the special provisions of subsection 5.3.

5.2.c. After receipt of the notice under subdivision 5.2.b., the Director will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision 5.2.a. and subsection 5.3.

5.3. Retired units exempted under this section shall be subject to the following special provisions:

5.3.a. A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect;

5.3.b. The Director will allocate NO_X allowances in accordance with sections 40. through 42. to a unit exempt under this section. For each ozone season for which the unit is allocated one or more NO_X allowances, the owners and operators of the unit shall specify a general account, in which the Director will record such NO_X allowances;

5.3.c. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Director or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired; and

5.3.d. The owners and operators and, to the extent applicable, the NO_X authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_X Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements

arise or must be complied with, after the exemption takes effect;

5.3.e.1. A unit exempt under this section and located at a source that is required or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the NO_X authorized account representative of the source submits a complete NO_X Budget permit application under section 22. for the unit not less than 18 months (or such lesser time provided by the Director) before the later of May 1, 2004 or the date on which the unit is to first resume operation; and

5.3.e.2. A unit exempt under this section and located at a source that is required or but for this exemption would be required, to have a non-title V permit shall not resume operation unless the NO_X authorized account representative of the source submits a complete NO_X Budget permit application under section 22. for the unit not less than 18 months (or such lesser time provided by the Director) before the later of May 1, 2004 or the date on which the unit is to first resume operation;

5.3.f. Loss of exemption. -- On the earlier of the following dates, a unit exempt under subsection 5.2. shall lose its exemption:

5.3.f.1. The date on which the NO_X authorized account representative submits a NO_X Budget permit application under paragraphs 5.3.e.1. and 5.3.e.2.; or

5.3.f.2. The date on which the NO_X authorized account representative is required under paragraphs 5.3.e.1. and 5.3.e.2. to submit a NO_X Budget permit application; or

5.3.f.3. The date on which the unit resumes operation, if the authorized account representative is not required to submit a NO_X Budget permit application.

5.3.g. For the purpose of applying monitoring requirements under sections 70. through 76., a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation; and

5.3.h. A unit that is exempt under this section is not eligible to be a NO_X Budget opt-in source under sections 80. through 88.

§45-1-6. NO_X Budget Trading Program Standard Requirements.

6.1. Permit Requirements.

6.1.a. The NO_X authorized account representative of each NO_X Budget source required to have a federally enforceable permit and each NO_X Budget unit required to have a federally enforceable permit at the source shall:

6.1.a.1. Submit to the Director a complete NO_X Budget permit application under section 22. in accordance with the deadlines specified in subsections 21.2. and 21.3.; and

6.1.a.2. Submit in a timely manner any supplemental information that the Director determines is necessary in order to review a NO_X Budget permit application and issue or deny a NO_X Budget permit.

6.1.b. The owners and operators of each NO_X Budget source required to have a federally enforceable permit and each NO_X Budget unit required to have a federally enforceable permit at the source shall have a NO_X Budget permit issued by the Director and operate the unit in compliance with such NO_X Budget permit.

6.1.c. The owners and operators of a NO_X Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_X Budget permit application and to have a NO_X Budget permit, under sections 20. through 24. for such NO_X Budget source.

6.2. Monitoring requirements.

6.2.a. The owners and operators, and to the extent applicable, 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 sections 70. through 76.

6.2.b. The emissions measurements recorded and reported in accordance with sections 70. through 76. shall be used to determine compliance by the unit with the NO_X Budget emissions limitation under subsection 6.3.

6.3. Nitrogen oxides requirements.

6.3.a. 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 section 54., as of the NO_X allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_X emissions for the ozone season from the unit, as determined in accordance with sections 70. through 76., plus any amount necessary to account for actual heat input under subsection 42.5. for the ozone season or to account for excess emission for a prior ozone season under subsection 54.4., or to account for the withdrawal from the NO_X Budget Trading Program, or a change in regulatory status of a NO_X Budget opt-in unit under section 86. or section 87.

6.3.b. Each ton of nitrogen oxides emitted in excess of the NO_X Budget emissions limitation shall constitute a separate violation of this rule, the CAA and W.Va. Code §§22-5-1 et seq.

6.3.c. A NO_X Budget unit shall be subject to the requirements under subdivision 6.3.a. starting on the later of May 1, 2004 or the date on which the unit commences operation.

6.3.d. NO_X allowances shall be held in, deducted from or transferred among NO_X Allowance Tracking System accounts in accordance with sections 40. through 42., sections 50. through 57., sections 60. through 62. and sections 80. through 88.

6.3.e. A NO_X allowance shall not be deducted, in order to comply with the requirements under subdivision 6.3.a., for an ozone season in a year prior to the year for which the NO_X allowance was allocated.

6.3.f. A NO_X allowance allocated by the Director or the Administrator under the NO_X Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_X Budget Trading Program. No provision of the NO_X Budget Trading Program, the NO_X Budget permit application, the NO_X Budget permit or an exemption under section 5. and no provision of law shall be construed to limit the authority of the Administrator or the Director to terminate or limit such authorization.

6.3.g. A NO_X allowance allocated by the Director or the Administrator under the NO_X Budget Trading Program does not constitute a property right.

6.3.h. Upon recordation by the Administrator under sections 50. through 57., sections 60. through 62. or sections 80. through 88., every allocation, transfer or deduction of a NO_X allowance to or from a NO_X Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically and become a part of, any NO_X Budget permit of the NO_X Budget unit by operation of law without any further review.

6.4. Excess emissions requirements.

6.4.a. The owners and operators of a NO_X Budget unit that has excess emissions in any ozone season shall:

6.4.a.1. Surrender the NO_X allowances required for deduction under subdivision 54.4.a.; and

6.4.a.2. Pay any fine, penalty or assessment or comply with any other remedy imposed under subdivision 54.4.c.

6.5. Recordkeeping and reporting requirements.

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

6.5.a.1. 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 section 13.; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_X authorized account representative.

6.5.a.2. All emissions monitoring information, in accordance with sections 70. through 76.; provided that to the extent that sections 70. through 76. provides for a 3-year period for recordkeeping, the 3-year period shall apply.

6.5.a.3. Copies of all reports, compliance certifications and other submissions and all records

made or required under the NO_X Budget Trading Program.

6.5.a.4. Copies of all documents used to complete a NO_X Budget permit application and any other submission under the NO_X Budget Trading Program or to demonstrate compliance with the requirements of the NO_X Budget Trading Program.

6.5.b. 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 sections 30. and 31., sections 70. through 76. or sections 80. through 88.

6.6. Liability.

6.6.a. Any person who knowingly violates any requirement or prohibition of the NO_X Budget Trading Program, a NO_X Budget permit or an exemption under subdivision 4.2.a. or section 5. shall be subject to enforcement pursuant to §§22-5-1 et seq. or the CAA.

6.6.b. Any person who knowingly makes a false material statement in any record, submission or report under the NO_X Budget Trading Program shall be subject to enforcement pursuant to §§22-5-1 et seq. or the CAA.

6.6.c. No permit revision shall excuse any violation of the requirements of the NO_X Budget Trading Program that occurs prior to the date that the revision takes effect.

6.6.d. Each NO_X Budget source and each NO_X Budget unit shall meet the requirements of the NO_X Budget Trading Program.

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

6.6.f. Any provision of the NO_X Budget Trading Program that applies to a NO_X Budget unit (including a provision applicable to the NO_X authorized account representative of a NO_X budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under sections 70. through 76., 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.

6.7. 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 subdivision 4.2.a. or section 5. shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_X authorized account representative of a NO_X Budget source or NO_X Budget unit from compliance with any other provision of §§22-5-1 et seq., the approved West Virginia state implementation plan, a federally enforceable permit or the CAA.

§45-1-7. Computation of Time.

7.1. 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.

7.2. 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.

7.3. 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.

§45-1-10. Authorization and Responsibilities of the NO_X Authorized Account Representative.

10.1. Except as provided under section 11., each NO_X Budget source, including all NO_X Budget units at the source, shall have one and only one NO_X authorized account representative, with regard to all matters under the NO_X Budget Trading Program concerning the source or any NO_X Budget unit at the source.

10.2. 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.

10.3. Upon receipt by the Administrator of a complete account certificate of representation under section 13., the NO_X authorized account representative of the source shall represent and, by his or her representations, actions, inactions or submissions, legally bind each owner and operator of the NO_X Budget source represented and each NO_X Budget unit at the source in all matters pertaining to the NO_X Budget Trading Program, not withstanding any agreement between the NO_X authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_X authorized account representative by the Director, the Administrator or a court regarding the source or unit.

10.4. No NO_X Budget permit shall be issued and no NO_X Allowance Tracking System account shall be established for a NO_X Budget unit at a source until the Administrator has received a complete account certificate of representation under section 13. for a NO_X authorized account representative of the source and the NO_X Budget units at the source.

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

10.5.b. The Director and the Administrator will accept or act on a submission made on behalf of owner or operators of a NO_X Budget source or a NO_X Budget unit only if the submission has been made, signed and certified in accordance with subsection 10.5.a.

§45-1-11. Alternate NO_X Authorized Account Representative.

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

11.2. Upon receipt by the Administrator of a complete account certificate of representation under section 13., any representation, action, inaction or submission by the alternate NO_X authorized account representative shall be deemed to be a representation, action, inaction or submission by the NO_X authorized account representative.

11.3. Except in this section and subsection 10.1., sections 12., 13. and 51., whenever the term "NO_X authorized account representative" is used in this rule, the term shall be construed to include the alternate NO_X authorized account representative.

§45-1-12. Changing the NO_X Authorized Account Representative and the Alternate NO_X Authorized Account Representative; Changes in Owners and Operators.

12.1. Changing the NO_X authorized account representative. -- The NO_X authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under section 13. Notwithstanding any such change, all representations, actions, inactions and submissions by the previous NO_X authorized account representative prior to the time and date when the 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.

12.2. 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 Administrator of a superseding complete account certificate of representation under section 13. Notwithstanding any such change, all representations, actions, inactions and submissions by the previous alternate NO_X authorized account representative prior to the time and date when the 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.

12.3. Changes in owners and operators.

12.3.a. In the event a new owner or operator of a NO_X Budget source or a NO_X Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions and submissions of the NO_X authorized account representative and any alternate NO_X authorized account representative of the source or unit and the decisions orders, actions and inactions of the Director or the Administrator, as if the new owner or operator were included in such list.

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

§45-1-13. Account Certificate of Representation.

13.1. A complete account certificate of representation for a NO_X authorized account representative or an alternate NO_X authorized account representative shall include the following elements in a format prescribed by the Administrator:

13.1.a. 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;

13.1.b. 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;

13.1.c. A list of the owners and operators of the NO_X Budget source and of each NO_X Budget unit at the source;

13.1.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 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 Director, the Administrator or a court regarding the source or unit"; and

13.1.e. The signature of the NO_X authorized account representative and any alternate NO_X authorized account representative and the dates signed.

13.2. Unless otherwise required by the Director or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Director or the Administrator. Neither the Director nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§45-1-14. Objections Concerning the NO_X Authorized Account Representative.

14.1. Once a complete account certificate of representation under section 13. has been submitted and received, the Director and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under section 13. is received by the Administrator.

14.2. Except as provided in subsections 12.1. or

12.2., no objection or other communication submitted to the Director or the Administrator concerning the authorization or any representation, action, inaction or submission of the NO_X authorized account representative shall affect any representation, action, inaction or submission of the NO_X authorized account representative or the finality of any decision or order by the Director or the Administrator under the NO_X Budget Trading Program.

14.3. Neither the Director nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction or submission of any NO_X authorized account representative, including private legal disputes concerning the proceeds of NO_X allowance transfers.

§45-1-20. General NO_X Budget Trading Program Permit Requirements.

20.1. For each NO_X Budget source required to have a federally enforceable permit, such permit shall include a NO_X Budget permit administered by the Director.

20.1.a. 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 45CSR30, except as provided otherwise by section 20. or sections 80. through 88. The applicable provisions of 45CSR30 shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield, operating permit issuance, operating permit revision and reopening, public participation and review by the Director and Administrator.

20.1.b. 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 45CSR13, except as provided otherwise by sections 20. through 24. or sections 80. through 88. The applicable provisions of 45CSR13 may include, but are not limited to, provisions addressing permit applications, permit duration, permit issuance, permit revision and reopening, public participation and review by the Director.

20.2. Each NO_X Budget permit (including a draft or proposed NO_X Budget permit, if applicable) shall include all applicable NO_X Budget Trading Program requirements and shall be a complete and segregable portion of the permit under subsection 20.1.

§45-1-21. NO_X Budget Permit Applications.

21.1. Duty to apply. -- The NO_X authorized account representative of any NO_X Budget source required to have a federally enforceable permit shall submit to the Director a complete NO_X Budget permit application under section 22. by the applicable deadline in subsection 21.2.

21.2. Deadlines for NO_X Budget permit applications.

21.2.a. For NO_X Budget sources required to have a title V operating permit:

21.2.a.1. For any source, with one or more NO_X Budget units under subsection 4.1. that commenced operation before January 1, 2000, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under section 22. covering such NO_X Budget units to the Director at least 18 months before May 1, 2004; and

21.2.a.2. For any source, with any NO_X Budget unit under subsection 4.1. 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 section 22. covering such NO_X Budget unit to the Director at least 6 months before the later of May 1, 2004 or the date on which the NO_X Budget unit commences operation.

21.2.b. For NO_X Budget sources required to have a non-title V permit:

21.2.b.1. For any source, with one or more NO_X Budget units under subsection 4.1. that commenced operation before January 1, 2000, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under section 22. covering such NO_X Budget units to the Director at least 6 months before May 1, 2004; and

21.2.b.2. For any source, with any NO_X Budget unit under subsection 4.1. 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 section 22. covering such NO_X Budget unit to the

Director at least 6 months before the later of May 1, 2004 or the date on which the NO_X Budget unit commences operation.

21.3. Duty to reapply.

21.3.a. For a NO_X Budget source required to have a title V operating permit, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under section 22. for the NO_X Budget source covering the NO_X Budget units at the source in accordance with the operating permit renewal requirements set forth in 45CSR30.

21.3.b. For a NO_X Budget source required to have a non-title V permit, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under section 22. for the NO_X Budget source covering the NO_X Budget units at the source in accordance with 45CSR13.

§45-1-22. Information Requirements for NO_X Budget Permit Applications.

22.1. 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 Director:

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

22.1.b. Identification of each NO_X Budget unit at the NO_X Budget source and whether it is a NO_X Budget unit under subsection 4.1. or under sections 80. through 88.;

22.1.c. The standard requirements under section 6.; and

22.1.d. 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:

22.1.d.1. "I certify that each unit for which this permit application is submitted under sections 80. through 88. is not a NO_X Budget unit under subsection 4.1. and is not covered by an exemption under subdivision 4.2.a. or section 5. that is in effect"; and

22.1.d.2. 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 sections 80. through 88. is currently operating, as that term is defined under subsection 2.62."

§45-1-23. NO_X Budget Permit Contents.

23.1. Each NO_X Budget permit (including any draft or proposed NO_X Budget permit) will contain, in a format prescribed by the Director, all elements required for a complete NO_X Budget permit application under section 22.

23.2. Each NO_X Budget permit is deemed to incorporate automatically the definitions of terms under section 2. and, upon recordation by the Administrator under sections 50. through 57., sections 60. through 62. or sections 80. through 88., every allocation, transfer or deduction of a NO_X allowance to or from the compliance accounts of the NO_X Budget units covered by the permit or the overdraft account of the NO_X Budget source covered by the permit.

§45-1-24. NO_X Budget Permit Revisions.

24.1. For a NO_X Budget source with a title V operating permit, except as provided in subsection 23.2., the Director will revise the NO_X Budget permit, as necessary, in accordance with the operating permit revision requirements set forth in 45CSR30.

24.2. For a NO_X Budget source with a non-title V permit, except as provided in subsection 23.2., the Director will reissue the NO_X Budget permit as necessary, in accordance with 45CSR13.

§45-1-30. Compliance Certification Report.

30.1. Applicability and deadline. -- For each ozone season 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 Director and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

30.2. Contents of report. -- The NO_X authorized account representative shall include in the compliance certification report under subsection 30.1. the

following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NO_X Budget emissions limitation for the ozone season covered by the report:

30.2.a. Identification of each NO_X Budget unit;

30.2.b. 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 section 54. for the ozone season;

30.2.c. 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 sections 70. through 76., the percentage of allowances that is to be deducted from each unit's compliance account under subsection 54.5.; and

30.2.d. The compliance certification under subsection 30.3.

30.3. Compliance certification. -- In the compliance certification report under subsection 30.1., 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:

30.3.a. Whether the unit was operated in compliance with the NO_X Budget emissions limitation;

30.3.b. Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit and contains all information necessary to attribute NO_X emissions to the unit, in accordance with sections 70. through 76.;

30.3.c. 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 sections 70. through 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 have been made;

30.3.d. Whether the facts that form the basis for certification under sections 70. through 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 sections 70. through 76., if any, have changed; and

30.3.e. If a change is required to be reported under subdivision 30.3.d., 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.

§45-1-31. Director's and Administrator's Action on Compliance Certifications.

31.1. The Director 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.

31.2. The Administrator may deduct NO_X allowances from or transfer NO_X allowances 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 31.1.

§45-1-40. State NO_X Trading Program Budget.

In accordance with sections 41. and 42., the Director will allocate to the NO_X Budget units under subsection 4.1. for each ozone season specified in section 41., a total number of allowances equal to 2184 tons, less the sum of the NO_X emission limitations (in tons) for each unit exempt under subdivision 4.2.a. that is not allocated any NO_X allowances under subsection 42.3. for the ozone season and whose NO_X emission limitation (in tons of NO_X) is not included in the amount calculated under section 42.4.e.2.B. for the

ozone season.

§45-1-41. Timing Requirements for State NO_X Allowance Allocations.

41.1. By April 1, 2001, the Director will determine by order and submit to the Administrator the state NO_X allowance allocations, in accordance with subdivision 42.1.a. and subsection 42.3., for the ozone seasons in 2004 through 2007.

41.2. By April 1, 2005, the Director will determine by order and submit to the Administrator the NO_X allowance allocations, in accordance with subdivision 42.1.a. and subsection 42.3. for the ozone seasons in 2008 through 2012.

41.3. 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 allowance allocations are determined, the Director will determine by order and submit to the Administrator the NO_X allowance allocations, in accordance with subdivision 42.1.a. and subsection 42.3. for the ozone seasons in the years that are 3, 4, 5, 6 and 7 years after the applicable deadline under this subsection.

41.4. By April 1, 2004 and April 1 of each year thereafter, the Director will determine by order and submit to the Administrator the NO_X allowance allocations, in accordance with subsection 42.4., for the ozone season in the year of the applicable deadline under this subsection.

41.5. The Director will make available to the public and the Administrator the draft order determining the NO_X allowance allocations under subsections 41.2., 41.3. or 41.4. by February 1 of the applicable year by filing the draft order with the Secretary of State for publication in the State Register and submittal to the Administrator. The draft order shall be accompanied with a notice providing for a 30 day comment period during which the submission of written objections to the determinations in the draft order will be accepted. Objections shall be limited to addressing whether the determinations are in accordance with section 42. Based on any such objections, the Director will adjust each determination to the extent necessary to ensure that it is in accordance with section 42. If error in any such order is discovered after the April 1 issuance of the final orders, the Director may issue a revised order making correction to such orders. Any such revised final order shall then be submitted to the Administrator, filed with the Secretary of State and published in the State Register.

§45-1-42. State NO_X Allowance Allocations.

42.1.a. The heat input (in mmBtu) used for calculating state NO_X allowance allocations for each NO_X Budget unit under subsection 4.1. will be:

42.1.a.1. For a state NO_X allowance allocation under subsection 41.1.:

42.1.a.1.A. Reserved.

42.1.a.1.B. For a unit under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3., the ozone season in 1995 or the average of the two highest amounts of the unit's heat input for the ozone seasons 1995 through 1998.

42.1.a.2. For a NO_X allowance allocation under subsection 41.2., the unit's average heat input for the ozone seasons in 2002 through 2004.

42.1.a.3. For a NO_X allowance allocation under subsection 41.3., the unit's average heat input for the ozone season in the years that are 4, 5, 6, 7 and 8 years before the first ozone season for which the allocation is being calculated.

42.1.b. The unit's total heat input for the ozone season in each year specified under subdivision 42.1.a. will be determined in accordance with 40 CFR Part 75. Notwithstanding the first sentence of this subdivision:

42.1.b.1. For a NO_X allowance allocation under subsection 41.1., such heat input will be determined using the best available data reported to the Director for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the ozone season; and

42.1.b.2. For a NO_X allowance allocation under subsections 41.2. or 41.3., for a unit exempt under subdivision 4.2.a., such heat input shall be treated as zero if the unit is exempt under subdivision 4.2.a. during the ozone season.

42.2. Reserved.

42.2.a. Reserved.

42.2.b. Reserved.

42.3. For each group of ozone seasons specified in subsections 41.1., 41.2. and 41.3., the Director will allocate to all NO_X Budget units under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. that commenced operation before May 1, 1997 for allocations under subsection 41.1., May 1, 2003 for allocations under subsection 41.2. and May 1 of the year 5 years before the first ozone season for which the allocation under subsection 41.3. is being calculated, a total number of NO_X allowances equal to 95 percent of the portion of the state NO_X trading program budget under section 40. covering such units. The Director will allocate NO_X allowances in accordance with the following procedures:

42.3.a. The Director will allocate NO_X allowances to each NO_X Budget unit under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under subdivision 42.1.a., divided by 2000 lb/ton and rounded to the nearest whole number of NO_X allowances as appropriate; and

42.3.b. If the initial total number of NO_X allowances allocated to all NO_X Budget units under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. for an ozone season under subdivision 42.3.a. does not equal 95 percent of the portion of the state NO_X Trading Program Budget under section 40., covering such units, the Director will adjust the total number of NO_X allowances allocated to all such NO_X Budget units for the ozone season under subdivision 42.1.a. so that the total number of NO_X allowances allocated equals 95 percent of the portion of the state NO_X Trading Program Budget under section 40., covering such units. This adjustment will be made by multiplying each unit's allocation by 95 percent of the portion of the state NO_X Trading Program Budget under section 40., covering such units; dividing by the total number of NO_X allowances allocated under subdivision 42.3.a. for the ozone season, and rounding to the nearest whole number of NO_X allowances as appropriate.

42.4. For each ozone season under subsection 41.4., the Director will allocate NO_X allowances to NO_X Budget units under subsection 4.1. (except for units exempt under subdivision 4.2.a.) that commence operation or are projected to commence operation, on or after: May 1, 1997 (for ozone seasons under subsection 41.1.); May 1, 2003 (for ozone seasons under subsection 41.2.); and May 1 of the year 5 years before the beginning of the group of 5 years that includes the ozone season (for ozone seasons under subsection 41.3.). The Director will make the allocations under this subsection in accordance with the following procedures:

42.4.a. The Director will establish one allocation set-aside for each ozone season. Each allocation set-aside will be allocated NO_X allowances equal to 5 percent of the tons of NO_X emission in the state NO_X Trading Program Budget under section 40., rounded to the nearest whole number of NO_X allowances as appropriate;

42.4.b. The NO_X authorized account representative of a NO_X Budget unit under subsection 42.4. may submit to the Director a request, in writing or in a format specified by the Director, to be allocated NO_X allowances for the ozone season. The NO_X allowance allocation request must be received by the Director on or after the date on which the Director issues a permit to construct the unit and by January 1 before the ozone season for which NO_X allowances are requested;

42.4.c. Reserved.

42.4.c.1. Reserved.

42.4.c.2. Reserved.

42.4.d. In a NO_X allowance allocation request under subdivision 42.4.b., the NO_X authorized account representative for NO_X Budget units under paragraphs 4.1.b.1., 4.1.b.2. or 4.1.b.3. may request for an ozone season NO_X allowances in an amount that does not exceed the lesser of:

42.4.d.1. 0.17 lb/mmBtu multiplied by the NO_X Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the lesser of 3672 hours or the number of hours remaining in the ozone season starting with the day in the ozone season on which the unit commences operation or is projected to commence operation, divided by 2000 lb/ton and rounded to the nearest whole number of NO_X allowances as appropriate; or

42.4.d.2. 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 3672 hours or the number of hours remaining in the ozone season starting with the day in the ozone season on which the unit commences operation or is projected to commence operation, divided by 2000

lb/ton and rounded to the nearest whole number of NO_X allowances as appropriate;

42.4.e. The Director will review each NO_X allowance allocation request submitted in accordance with subdivision 42.4.b. and will allocate NO_X allowances pursuant to such request as follows:

42.4.e.1. Upon receipt of the NO_X allowance allocation request, the Director will make any necessary adjustments to the request to ensure the requirements of subsection 42.4. and subdivisions 42.4.b. and 42.4.d. are met;

42.4.e.2. The Director will determine the following amounts:

42.4.e.2.A. The sum of the NO_X allowances requested (as adjusted under paragraph 42.4.e.1.) in all NO_X allowance allocation requests under subdivision 42.4.b. for the ozone season; and

42.4.e.2.B. For units exempt under subdivision 4.2.a. that commenced operation, or are projected to commence operation, on or after May 1, 1997 (for ozone seasons under subsection 41.1.); May 1, 2003, (for ozone seasons under subsection 41.2.); and May 1 of the year 5 years before the beginning of the group of 5 years that includes the ozone season (for ozone seasons under subsection 41.3.), the sum of the NO_X emission limitations (in tons of NO_X) on which each unit's exemption under subdivision 4.2.a. is based;

42.4.e.3. If the number of NO_X allowances in the allocation set-aside for the ozone season less the amount under subparagraph 42.4.e.2.B. is not less than the amount determined under subparagraph 42.4.e.2.A., the Director will allocate the amount of the NO_X allowances requested (as adjusted under paragraph 42.4.e.1.) to the NO_X Budget unit for which the allocation request was submitted; and

42.4.e.4. If the number of NO_X allowances in the allocation set-aside for the ozone season less the amount under subparagraph 42.4.e.2.B. is less than the amount determined under subparagraph 42.4.e.2.A., the Director 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 42.4.e.1.) multiplied by the number of NO_X allowances in the allocation set-aside for the ozone season less the amount determined under subparagraph 42.4.e.2.B., divided by the amount determined under subparagraph 42.4.e.2.A. and rounded to the nearest whole number of NO_X allowances as appropriate.

42.5.a. For a NO_X Budget unit that is allocated NO_X allowances under subsection 42.4. for an ozone season, the Administrator will deduct NO_X allowances under subsections 54.2., 54.5. or 54.6. to account for the actual heat input of the unit during the ozone season. The 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 allowances 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 units under paragraphs 4.1.b.1., 4.1.b.2. and 4.1.b.3. = (unit's NO_X allowances allocated for ozone season) - [(unit's actual ozone season heat input X the lessor of 0.17 lb/mmBtu or the unit's most stringent state or federal NO_X emission limitation) ÷ 2000 lb/ton].

where:

"Unit's NO_X allowances allocated for ozone season" is the number of NO_X allowances allocated to the unit for the ozone season under subsection 42.4.; and

"Unit's actual ozone season heat input" is the heat input (in mmBtu) of the unit during the ozone season.

42.5.b. The Director will transfer any NO_X allowances deducted under subdivision 42.3.a. to the allocation set-aside for the ozone season for which they were allocated.

42.6. After making the deductions for compliance under subsections 54.2., 54.5. or 54.6. for an ozone season, the Administrator will determine whether any NO_X allowances remain in the allocation set-aside for the ozone season. The Director will allocate any such NO_X allowances to the NO_X Budget units 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 NO_X 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 ozone season;

"Unit's NO_X allowance allocation" is the number of NO_X allowances allocated under subsection 42.3. to the unit for the ozone season to which the allocation set-aside applies; and

"State NO_X Trading Program Budget excluding allocation set-aside" is the state NO_X Trading Program Budget under section 40. for the ozone season to which the allocation set-aside applies multiplied by 95 percent, rounded to the nearest whole number of NO_X allowances as appropriate.

42.7. If the Administrator determines that NO_X allowances were allocated under subsections 42.3. or 42.4. for an ozone season and the recipient of the allocation is not actually a NO_X Budget unit under subsection 4.1., the Administrator will notify the NO_X authorized account representative and then will act in accordance with the following procedures:

42.7.a.1. The Administrator will not record such NO_X allowances for the ozone season in an account under section 53.;

42.7.a.2. If the Administrator already recorded such NO_X allowances for the ozone season in an account under section 53. and if the Administrator makes such determination before making all deductions pursuant to section 54. (except deductions pursuant to subdivision 54.4.b.) for the ozone season, then the Administrator will deduct from the account NO_X allowances equal in number to and allocated for the same or a prior ozone season as the NO_X allowances allocated to such recipient for the ozone season. The NO_X authorized account representative shall ensure 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 Administrator will deduct the required number of NO_X allowances, regardless of the ozone season for which they were allocated, whenever NO_X allowances are recorded in the account or:

42.7.a.3. If the Administrator already recorded such NO_X allowances for the ozone season in an account under section 53. and if the Administrator makes such determination after making all deductions pursuant to section 54. (except deductions pursuant to subdivision 54.4.b.) for the ozone season, then the Administrator will apply paragraph 42.7.a.2. to any subsequent ozone season for which NO_X allowances were allocated to such recipient.

42.7.b. The Administrator will transfer the NO_X allowances that are not recorded, or that are deducted, pursuant to paragraphs 42.7.a.1., 42.7.a.2. and 42.7.a.3. to the state allocation set-aside.

§45-1-43. Compliance Supplement Pool.

43.1. For any NO_X Budget unit that reduces its NO_X emission rate in the 2002 or 2003 ozone season, the owners and operators may request early reduction credits in accordance with the following requirements:

43.1.a. Each NO_X Budget unit for which the owners and operators intend to request, or request, any early reduction credits in accordance with subdivision 43.1.d. shall monitor and report NO_X emissions in accordance with sections 70. through 76. starting in the 2001 ozone season and for each ozone season for which such early reduction credits are requested. The unit's percent monitor data availability shall not be less than 90 percent during the 2001 ozone season and the unit must be in full compliance with any applicable state or federal NO_X emission control requirements during 2001 through 2003;

43.1.b. NO_X emission rate and heat input under subdivisions 43.1.c. and 43.1.d. shall be determined in accordance with sections 70. through 76.;

43.1.c. Each NO_X Budget unit for which the owners and operators intend to request, or request, any early reduction credits under subdivision 43.1.d. shall reduce its NO_X emission rate, for each ozone season 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 2001 ozone season; and

43.1.d. The NO_X authorized account representative of a NO_X Budget unit that meets the requirements of subdivisions 43.1.a. and 43.1.c. may submit to the Director a request for early reduction credits for the unit based on NO_X emission rate reductions made by the unit in the ozone season for 2002 or 2003.

43.1.d.1. In the early reduction credit request, the NO_X authorized account may request early reduction credits for such ozone season in an amount equal to the unit's heat input for such ozone season multiplied by the difference between 0.25 lb/mmBtu and the unit's NO_X emission rate for such ozone season, divided by 2000 lb/ton and rounded to the nearest whole number of tons.

43.1.d.2. The early reduction credit request must be submitted, in a format specified by the Director, by February 1, 2004.

43.2. Reserved.

43.2.a. Reserved.

43.2.b. Reserved.

43.2.c. Reserved.

43.3. The Director will review each early reduction credit request submitted in accordance with subsection 43.1. and will allocate NO_X allowances to NO_X Budget units covered by such request as follows:

43.3.a. Upon receipt of each early reduction credit request, the Director will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirements of subsection 43.1.;

43.3.b. After February 1, 2004, the Director will make available to the public a statement of the total number of early reduction credits requested by NO_X Budget units;

43.3.c. If the compliance supplement pool has a number of NO_X allowances not less than the amount of early reduction credits in all early reduction credit requests under subsection 43.1. for 2002 and 2003 (as adjusted under subdivision 43.3.a.) submitted by February 1, 2004, the Director will allocate to each NO_X Budget unit covered by such requests one allowance for each early reduction credit requested (as adjusted under subdivision 43.3.a.);

43.3.d. If the compliance supplement pool has a smaller number of NO_X allowances than the amount of early reduction credits in all early reduction credit requests under subsection 43.1. for 2002 and 2003 (as adjusted under subdivision 43.3.a.) submitted by February 1, 2004, the Director will allocate NO_X allowances 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:

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 2002 and 2003 in early reduction credit requests under subsection 43.1., as adjusted under subdivision 43.3.a.;

"Compliance supplement pool" is the number of NO_X allowances in the state compliance supplement pool;

"Total adjusted early reduction credits for all units" is the amount of early reduction credits requested for all units for 2002 and 2003 in early reduction credit requests under subsection 43.1., as adjusted under subdivision 43.3.a.;

43.3.e. By April 1, 2004, the Director will determine by order the allocations under subdivisions 43.3.c. or 43.3.d. The Director will make available to the public each determination of NO_X allowance allocations 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 subdivisions 43.3.a., 43.3.c. or 43.3.d. Based on any such objections, the Director will adjust each determination to the extent necessary to ensure that it is in accordance with subdivisions 43.3.a., 43.3.c. or 43.3.d.;

43.3.f. By May 1, 2004, the Director will record the allocations under subdivisions 43.3.c. or 43.3.d.;

43.3.g. NO_X allowances recorded under subdivision 43.3.f. may be deducted for compliance under section 54. for the ozone season in 2004 or 2005. Notwithstanding subsection 55.1., the Director will deduct as retired any NO_X allowance that is

recorded under subdivision 43.3.f. and that is not deducted for compliance under section 54. for the ozone season in 2004 or 2005; and

43.3.h. NO_X allowances recorded under subdivision 43.3.f. are treated as banked allowances in 2005 for the purposes of subsections 54.6. and 55.2.

§45-1-50. NO_X Allowance Tracking System Accounts.

50.1. Nature and function of compliance accounts and overdraft accounts. -- Consistent with subsection 51.1., the Administrator will establish one compliance account for each NO_X Budget unit and one overdraft account for each source with one or more NO_X Budget units. Allocations of NO_X allowances pursuant to sections 40. through 42. or section 88. and deductions or transfers of NO_X allowances pursuant to sections 31., 54. and 56., sections 60. through 62. or sections 80. through 88. will be recorded in the compliance accounts or overdraft accounts in accordance with sections 50. through 57.

50.2. Nature and function of general accounts. -- Consistent with subsection 51.2., the Administrator will establish, upon request, a general account for any person. Allocations of NO_X allowances pursuant to paragraph 4.2.d.2. or subdivision 5.3.b. and transfers of allowances pursuant to sections 60. through 62. will be recorded in the general accounts in accordance with sections 50. through 57.

§45-1-51. Establishment of Accounts.

51.1. Compliance accounts and overdraft accounts. -- Upon receipt of a complete account certificate of representation under section 13., the Administrator will establish:

51.1.a. A compliance account for each NO_X Budget unit for which the account certificate of representation was submitted; and

51.1.b. 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.

51.2. General accounts.

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

51.2.a.1. 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;

51.2.a.2. At the option of the NO_X authorized account representative organization name and type of organization;

51.2.a.3. 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;

51.2.a.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 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 NO_X 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 Administrator or a court regarding the general account";

51.2.a.5. The signature of the NO_X authorized account representative and any alternate NO_X authorized account representative and the dates signed; and

51.2.a.6. Unless otherwise required by the Director or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Director or the Administrator. Neither the Director nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

51.2.b. Upon receipt by the Administrator of a complete application for a general account under subdivision 51.2.a.:

51.2.b.1. The Administrator will establish a general account for the person or persons for whom the application is submitted;

51.2.b.2. The NO_X authorized account representative and any alternate NO_X authorized account representative for the general account shall represent and, by his or her representations, actions, inactions or submissions, legally bind each person who has an ownership interest with respect to NO_X allowances held in the general account in all matters pertaining to the NO_X Budget Trading Program, not withstanding any agreement between the NO_X authorized account representative or any alternate NO_X authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_X authorized account representative or any alternate NO_X authorized account representative by the Administrator or a court regarding the general account;

51.2.b.3. Each submission concerning the general account shall be submitted, signed and certified by the NO_X authorized account representative or any alternate NO_X authorized account representative for the persons having an ownership interest with respect to NO_X allowances held in the general account. Each such submission shall include the following certification statement by the NO_X authorized account representative or any alternate NO_X authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_X allowances held in the general account. I certify under penalty of law that I have personally examined and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment"; and

51.2.b.4. The 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 paragraph 51.2.b.3.

51.2.c.1. An application for a general account may designate one and only one NO_X authorized account representative and one and only one alternate NO_X authorized account representative who may act on behalf of the NO_X authorized account representative. The agreement by which the alternate NO_X authorized account representative is selected shall include a procedure for authorizing the alternate NO_X authorized account representative to act in lieu of the NO_X authorized account representative.

51.2.c.2. Upon receipt by the Administrator of a complete application for a general account under subdivision 51.2.a., any representation, action, inaction or submission by any alternate NO_X authorized account representative shall be deemed to be a representation, action, inaction or submission by the NO_X authorized account representative.

51.2.d.1. The NO_X authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subdivision 51.2.a. Notwithstanding any such change, all representations, actions, inactions and submissions by the previous NO_X authorized account representative prior to the time and date when the 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.

51.2.d.2. The alternate NO_X authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subdivision 51.2.a. Notwithstanding any such change, all representations, actions, inactions and submissions by the previous alternate NO_X authorized account representative prior to the time and date when the 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.

51.2.d.3.A. In the event a new person having an ownership interest with respect to NO_X allowances in the general account is not included in the list of such persons in the account certificate of

representation, such new person shall be deemed to 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 Administrator, as if the new person were included in such list.

51.2.d.3.B. Within 30 days following any change in the persons having an ownership interest with respect to NO_X allowances in the general account, including the addition of persons, the NO_X authorized account representative or any alternate NO_X authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_X allowances in the general account to include the change.

51.2.e.1. Once a complete application for a general account under subdivision 51.2.a. has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under subdivision 51.2.a. is received by the Administrator.

51.2.e.2. Except as provided in subdivision 51.2.d., no objection or other communication submitted to the Administrator concerning the authorization or any representation, action, inaction or submission of the NO_X authorized account representative or any alternate NO_X authorized account representative for a general account shall affect any representation, action, inaction or submission of the NO_X authorized account representative or any alternate NO_X authorized account representative or the finality of any decision or order by the Administrator under the NO_X Budget Trading Program.

51.2.e.3. The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction or submission of the NO_X authorized account representative or any alternate NO_X authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_X allowance transfers.

51.3. Account identification. -- The Administrator will assign a unique identifying number to each account established under subsections 51.1. or 51.2.

§45-1-52. NO_X Allowance Tracking System Responsibilities of NO_X Authorized Account Representative.

52.1. Following the establishment of a NO_X Allowance Tracking System account, all submissions to the 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.

52.2. Authorized account representative identification. -- The Administrator will assign a unique identifying number to each NO_X authorized account representative.

§45-1-53. Recordation of NO_X Allowance Allocations.

53.1. The Administrator will record the NO_X allowances for 2004 for a NO_X Budget unit allocated under sections 40. through 42. in the unit's compliance account, except for NO_X allowances under paragraph 4.2.d.2. or subdivision 5.3.b. which will be recorded in the general account specified by the owners and operators of the unit. The 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 subsection 88.1.

53.2. By May 1, 2002, the Administrator will record the NO_X allowances for 2005 for a NO_X Budget unit allocated under sections 40. through 42. in the unit's compliance account, except for NO_X allowances under paragraph 4.2.d.2. or subdivision 5.3.b., which will be recorded in the general account specified by the owners and operators of the unit. The 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 subsection 88.1.

53.3. By May 1, 2003, the Administrator will record the NO_X allowances for 2006 for a NO_X Budget unit allocated under sections 40. through 42. in the unit's compliance account, except for NO_X allowances under paragraph 4.2.d.2. or subdivision 5.3.b., which will be recorded in the general account specified by the owners and operators of the unit. The 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 subsection 88.1.

53.4. By May 1, 2004, the Administrator will record the NO_X allowances for 2007 for a NO_X Budget unit allocated under sections 40. through 42. in the unit's compliance account, except for NO_X allowances under paragraph 4.2.d.2. or subdivision 5.3.b., which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NO_X allowances for 2007 for a NO_X Budget opt-in unit in the unit's compliance account as allocated under subsection 88.1.

53.5. Each year starting with 2005, after the Administrator has made all deductions from a NO_X Budget unit's compliance account and the overdraft account pursuant to section 54. (except deductions pursuant to subdivision 54.4.b.), the Administrator will record:

53.5.a. NO_X allowances, in the compliance account, as allocated to the unit under sections 40. through 42. for the third year after the year of the ozone season for which such deductions were or could have been made;

53.5.b. NO_X allowances, in the general account specified by the owners and operators of the unit, as allocated under paragraph 4.2.d.2. or subdivision 5.3.b. for the third year after the year of the ozone season for which such deductions are or could have been made; and

53.5.c. NO_X allowances, in the compliance account, as allocated to the unit under subsection 88.1.

53.6. Serial numbers for allocated NO_X allowances. -- When allocating NO_X allowances to a NO_X Budget unit and recording them in an account, the Administrator will assign each NO_X allowance a unique identification number that will include digits identifying the year for which the NO_X allowance is allocated.

§45-1-54. Compliance.

54.1. 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 an ozone season in a given year only if the NO_X allowances:

54.1.a. Were allocated for an ozone season in a prior year or the same year; and

54.1.b. 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 ozone season or are transferred into the compliance account or overdraft account by a NO_X allowance transfer correctly submitted for recordation under section 60. by the NO_X allowance transfer deadline for that ozone season.

54.2. Deductions for compliance.

54.2.a. Following recordation in accordance with section 61. of NO_X allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_X allowance transfer deadline for an ozone season, the Administrator will deduct NO_X allowances available under subsection 54.1. to cover the unit's NO_X emissions (as determined in accordance with sections 70. through 76.) or to account for actual heat input under subsection 42.5. for the ozone season:

54.2.a.1. From the compliance account; and

54.2.a.2. Only if no more NO_X allowances available under subsection 54.1. remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the 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).

54.2.b. The Administrator will deduct NO_X allowances first under paragraph 54.2.a.1. and then under paragraph 54.2.a.2.:

54.2.b.1. Until the number of NO_X allowances deducted for the ozone season equals the number of tons of NO_X emissions, determined in accordance with sections 70. through 76. from the unit for the ozone season for which compliance is being determined, plus the number of NO_X allowances required for deduction to account for actual heat input under subsection 42.5. for the ozone season; or

54.2.b.2. Until no more NO_X allowances

available under subsection 54.1. remain in the respective account.

54.3.a. Identification of NO_X allowances by serial number. -- The NO_X authorized account representative for each compliance account may identify by serial number the NO_X allowances to be deducted from the unit's compliance account under subsections 54.2., 54.4. or 54.5. Such identification shall be made in the compliance certification report submitted in accordance with section 30.

54.3.b. First-in, first-out. -- The Administrator will deduct NO_X allowances for an ozone season 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 subdivision 54.3.a. or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

54.3.b.1. Those NO_X allowances that were allocated for the ozone season to the unit under sections 40. through 42. or sections 80. through 88.;

54.3.b.2. Those NO_X allowances that were allocated for the ozone season to any unit and transferred and recorded in the account pursuant to sections 60. through 62., in order of their date of recordation;

54.3.b.3. Those NO_X allowances that were allocated for a prior ozone season to the unit under sections 40. through 42. or sections 80. through 88.; and

54.3.b.4. Those NO_X allowances that were allocated for a prior ozone season to any unit and transferred and recorded in the account pursuant to sections 60. through 62., in order of their date of recordation.

54.4. Deductions for excess emissions.

54.4.a. After making the deductions for compliance under subsection 54.2., the 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 an ozone season after the ozone season in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

54.4.b. If the compliance account or overdraft account does not contain sufficient NO_X allowances, the Administrator will deduct the required number of NO_X allowances, regardless of the ozone season for which they were allocated, whenever NO_X allowances are recorded in either account.

54.4.c. Any allowance deduction required under subsection 54.4. shall not affect the liability of the owners and operators of the NO_X Budget unit for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under §§22-5-1 et seq. or the CAA. The following guidelines will be followed in assessing fines, penalties or other obligations:

54.4.c.1. For purposes of determining the number of days of violation, if a NO_X Budget unit has excess emissions for an ozone season, each day in the ozone season (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; and

54.4.c.2. Each ton of excess emissions is a separate violation.

54.5. 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 sections 70. through 76.:

54.5.a. The NO_X authorized account representative of the units may identify the percentage of NO_X allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_X emissions from the common stack for an ozone season. Such identification shall be made in the compliance certification report submitted in accordance with section 30.; and

54.5.b. Notwithstanding paragraph 54.2.b.1., the Administrator will deduct NO_X allowances for each such unit until the number of NO_X allowances deducted equals the unit's identified percentage (under subdivision 54.5.a.) of the number of tons of NO_X emissions, as determined in accordance with sections 70. through 76., from the common stack for the ozone season for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit plus the number of allowances required for deduction to account for actual heat input under subsection 42.5. for the ozone season.

54.6. Deduction of banked allowances. -- Each year starting in 2005, after the Administrator has completed the designation of banked NO_X allowances under subdivision 55.1.b. and before May 1 of the year, the Administrator will determine the extent to which banked NO_X allowances otherwise available under subsection 54.1. are available for compliance in the ozone season for the current year, as follows. The terms "compliance account", "overdraft account", "general account", "states" and "trading program budgets" in subdivision 54.6.a. through paragraph 54.6.c.2. shall be read to include respectively a compliance account, an overdraft account, a general account, each state or portion of a state, and the trading program budget of each state or portion of a state under the NO_X Budget Trading Program established by the Administrator pursuant to 40 CFR Part 97.

54.6.a. The Administrator will determine the total number of banked NO_X allowances held in compliance accounts, overdraft accounts, or general accounts;

54.6.b. If the total number of banked NO_X allowances determined under subdivision 54.6.a. 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 for all states for the ozone season, any banked NO_X allowance may be deducted for compliance in accordance with subsections 54.1. through 54.5.

54.6.c. If the total number of banked NO_X allowances determined under subdivision 54.6.a. to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10 percent of the sum of the trading program budgets for all states for the ozone season, any banked allowance may be deducted for compliance in accordance with subsections 54.1. through 54.5., except as follows:

54.6.c.1. The Administrator will determine the following ratio: 0.10 multiplied by the sum of the trading program budgets for all states for the ozone season and divided by the total number of banked NO_X allowances determined under subdivision 54.6.a. to be held in compliance accounts, overdraft accounts, or general accounts; and

54.6.c.2. The Administrator will multiply the number of banked NO_X allowances in each compliance account or overdraft account by the ratio determined under paragraph 54.6.c.1. The resulting product is the number of banked NO_X allowances in the account that may be deducted for compliance in accordance with subsections 54.1. through 54.5. Any banked NO_X allowances in excess of the resulting product may be deducted for compliance in accordance with subsections 54.1. through 54.5., except that, if such NO_X allowances are used to make a deduction under subsections 54.2. or 54.5., two (rather than one) such NO_X allowances shall authorize up to one ton of NO_X emissions during the ozone season and must be deducted for each deduction of one NO_X allowance required under subsections 54.2. or 54.5.

54.7. Recordation of deductions. -- The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subsections 54.2., 54.4., 54.5. or 54.6.

§45-1-55. NO_X Allowance Banking.

55.1. NO_X allowances may be banked for future use or transfer in a compliance account, an overdraft account or a general account, as follows:

55.1.a. Any NO_X allowance that is held in a compliance account, an overdraft account or a general account will remain in such account unless and until the NO_X allowance is deducted or transferred under sections 31., 54., 56., sections 60. through 62. or sections 80. through 88.; and

55.1.b. The Administrator will designate, as a "banked" NO_X allowance, any NO_X allowance that remains in a compliance account, an overdraft account or a general account after the Administrator has made all deductions for a given ozone season from the compliance account or overdraft account pursuant to section 54. (except deductions pursuant to subdivision 54.4.b.) and that was allocated for that ozone season or an ozone season in a prior year.

§45-1-56. Account Error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO_X Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NO_X authorized account representative for the account.

§45-1-57. Closing of General Accounts.

57.1. The NO_X authorized account representative of a general account may instruct the 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 section 60. an allowance transfer of all NO_X allowances in the account to one or more other NO_X Allowance Tracking System accounts.

57.2. If a general account shows no activity for a period of a year or more and does not contain any NO_X allowances, the 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 Administrator receives a correctly submitted transfer of NO_X allowances into the account under section 60. or a statement submitted by the NO_X authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

§45-1-60. Submission of NO_X Allowance Transfers.

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

60.1.a. The numbers identifying both the transferor and transferee accounts;

60.1.b. A specification by serial number of each NO_X allowance to be transferred; and

60.1.c. The printed name and signature of the NO_X authorized account representative of the transferor account and the date signed.

§45-1-61. Allowance Transfer Recordation.

61.1. Within 5 business days of receiving a NO_X allowance transfer, except as provided in subsection 61.2., the Administrator will record a NO_X allowance transfer by moving each NO_X allowance from the transferor account to the transferee account as specified by the request, provided that:

61.1.a. The transfer is correctly submitted under section 60.; and

61.1.b. The transferor account includes each NO_X allowance identified by serial number in the transfer.

61.2. A NO_X allowance transfer that is submitted for recordation following the NO_X allowance transfer deadline and that includes any NO_X allowances allocated for an ozone season prior to or the same as the ozone season to which the NO_X allowance transfer deadline applies will not be recorded until after the Administrator completes the recordation of NO_X allowances under section 53., for the ozone season in the third year after the NO_X allowance transfer deadline.

61.3. Where a NO_X allowance transfer submitted for recordation fails to meet the requirements of subsection 61.1., the Administrator will not record such transfer.

§45-1-62. Notification.

62.1. Notification of recordation. -- Within 5 business days of recordation of a NO_X allowance transfer under section 61., the 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.

62.2. Notification of non-recordation. -- Within 10 business days of receipt of a NO_X allowance transfer that fails to meet the requirements of subsection 61.1., the Administrator will notify the NO_X authorized account representatives of both accounts subject to the transfer of:

62.2.a. A decision not to record the transfer; and

62.2.b. The reasons for such non-recordation.

62.3. Nothing in this section shall preclude the submission of a NO_X allowance transfer for recordation following notification of non-recordation.

§45-1-70. 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, recordkeeping and reporting requirements as provided in sections 70. through 76. and subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in section 2. and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR Part 75 shall be replaced by the terms "NO_X Budget unit," "NO_X authorized account representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined section 2. The owner or operator of a unit that is not a NO_X Budget unit but that is monitored under 40 CFR 75.72(b)(2)(ii) shall comply with the monitoring, recordkeeping and reporting requirements for a NO_X Budget unit.

70.1. Requirements for installation, certification and data accounting. -- The owner or operator of each NO_X Budget unit shall meet the following requirements. These provisions shall also apply to a unit for which an application for a NO_X Budget opt-in permit is submitted and not denied or withdrawn, as provided in sections 80. through 88.:

70.1.a. Install all monitoring systems required under this subpart 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 40 CFR 75.76.;

70.1.b. Install all monitoring systems for monitoring heat input rate.

70.1.c. Successfully complete all certification tests required under section 71. and meet all other requirements of sections 70. through 76. and 40 CFR Part 75 applicable to the monitoring systems under subdivisions 70.1.a. and 70.1.b.; and

70.1.d. Record, report and quality-assure the data from the monitoring systems under subdivisions 70.1.a. and 70.1.b.

70.2. Compliance deadlines. -- The owner or operator shall meet the certification and other requirements of subdivisions 70.1.a. through 70.1.c. on or before the following dates. The owner or operator shall record, report and quality-assure the data from the monitoring systems under subdivisions 70.1.a. and 70.1.b. on and after the following dates:

70.2.a. For the owner or operator of a NO_X Budget unit for which the owner or operator intends to apply for early reduction credits under section 43., by May 1, 2001. 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 and is subject to the deadline under subdivision 70.2.b.;

70.2.b. For the owner or operator of a NO_X Budget unit under subsection 4.1. that commences operation before January 1, 2003 and that is not subject to or does not meet the deadline under subdivision 70.2.a., by May 1, 2003;

70.2.c. Reserved.

70.2.c.1. Reserved.

70.2.c.2. Reserved.

70.2.d. Reserved.

70.2.e. For the owner or operator of a NO_X Budget unit under subdivision 4.1.b. that commences operation on or after January 1, 2003 and that reports on an annual basis under subsection 74.4., by the later of the following dates:

70.2.e.1. May 1, 2003; or

70.2.e.2. 180 days after the date on which the unit commences operation;

70.2.f. For the owner or operator of a NO_X Budget unit under subdivision 4.1.b. that commences operation on or after January 1, 2003 and that report on an ozone season basis under paragraph 74.4.b.2., by 180 days after the date on which the unit commences operation, provided that this date is during an ozone season. If this date does not occur during an ozone season, the applicable deadline is May 1 immediately following this date;

70.2.g. 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 subdivisions 70.2.a., 70.2.b., 70.2.e. or 70.2.f. or under sections 80. through 88. and that reports on an annual basis under subsection 74.4., by 90 days after the date on which emissions first exit to the

atmosphere through the new stack or flue;

70.2.h. 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 subdivisions 70.2.a., 70.2.b., 70.2.e. or 70.2.f. or under sections 80. through 88. and that reports on an ozone season basis under paragraph 74.4.b.2., 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 an ozone season. If this date does not occur during the ozone season, the applicable deadline is May 1 immediately following this date; and

70.2.i. For the owner or operator of a unit for which an application for a NO_X Budget opt-in permit is submitted and not denied or withdrawn, by the date specified under sections 80. through 88.

70.3. Reporting data prior to initial certification. -- The owner or operator of a NO_X Budget unit under subdivisions 70.2.e. or 70.2.f. 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 appendix D or E of 40 CFR Part 75, or excepted monitoring methodology under 40 CFR 75.19 is provisionally certified.

70.4. Prohibitions.

70.4.a. No owner or operator of a NO_X Budget unit shall use any alternative monitoring system, alternative reference method or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with section 75.

70.4.b. No owner or operator of a NO_X Budget unit shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of sections 70. through 76. and 40 CFR Part 75, except as provided in 40 CFR 75.74.

70.4.c. No owner or operator of a NO_X Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of sections 70. through 76. and 40 CFR Part 75 or except as provided in 40 CFR 75.74.

70.4.d. No owner or operator of a NO_X Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under sections 70. through 76., except under any one of the following circumstances:

70.4.d.1. During the period that the unit is covered by an exemption under subdivision 4.2.a. or section 5. that is in effect;

70.4.d.2. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of sections 70. through 76. and 40 CFR Part 75, by the Director for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

70.4.d.3. The NO_X authorized account representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with subdivision 71.2.b.

§45-1-71. Initial Certification and Recertification Procedures.

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

71.1.a. If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_X emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the NO_X authorized account representative shall resubmit the petition to the Administrator under

subsection 75.1. to determine if the approval applies under the NO_X Budget Trading Program; and

71.1.b. For any additional CEMS required under the common stack provisions in 40 CFR 75.72 or for any NO_X concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of subsection 71.2.

71.2. 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. The owner or operator of such a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 or that qualifies to use an alternative monitoring system under subpart E of 40 CFR Part 75 shall comply with the following procedures, as modified by subsections 71.3. or 71.4. The owner or operator of a NO_X Budget unit that is subject to an Acid Rain emissions limitation and that requires additional CEMS under the common stack provisions in 40 CFR 75.72 or uses a NO_X concentration CEMS under 40 CFR 75.71(a)(2) shall comply with the following procedures:

71.2.a. Requirements for initial certification. -- The owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR Part 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadline in subsection 70.2. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required;

71.2.b. Requirements for recertification. – Whenever the owner or operator makes a replacement, modification or change in a certified monitoring system that may significantly affect 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 or appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system in accordance with 40 CFR 75.20(b). Examples of changes that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system or change in location or orientation of the sampling probe or site; and

71.2.c. Certification approval process for initial certification and recertification.

71.2.c.1. Notification of certification. -- The NO_X authorized account representative shall submit to the Administrator, the appropriate EPA Regional Office and the Director written notice of the dates of certification in accordance with section 73.

71.2.c.2. Certification application. -- The NO_X authorized account representative shall submit to the Administrator, the appropriate EPA Regional Office and the Director a certification application for each monitoring system required under subpart H of 40 CFR Part 75. A complete certification application shall include the information specified in subpart H of 40 CFR Part 75.

71.2.c.3. 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 in accordance with 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 Director of the complete certification application for the monitoring system or component thereof under paragraph 71.2.c.2. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Director does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Director.

71.2.c.4. Certification application formal approval process. -- The Director will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph 71.2.c.2. In the event the Director does not issue such a notice within such 120-day period, each monitoring system that 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.

71.2.c.4.A. Approval notice. -- If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the Director will issue a written notice of approval of the certification application within 120 days of receipt.

71.2.c.4.B. Incomplete application notice. -- A certification application will be considered complete when all of the applicable information required to be submitted under paragraph 71.2.c.2. has been received by the Director. If the certification application is not complete, then the Director will issue a written notice of incompleteness that sets a reasonable 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 Director may issue a notice of disapproval under subparagraph 71.2.c.4.C. The 120-day review period shall not begin prior to receipt of a complete certification application.

71.2.c.4.C. Disapproval notice. -- If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of sections 70. through 76., or if the certification application is incomplete and the requirement for disapproval under subparagraph 71.2.c.4.B. has been met, then the Director will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Director and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR 75.20(a)(3)). The owner or operator shall follow the procedures for loss of certification in paragraph 71.2.c.5. for each monitoring system or component thereof that is disapproved for initial certification.

71.2.c.4.D. Audit decertification. -- The Director may issue a notice of disapproval of the certification status of a monitor in accordance with subsection 72.2.

71.2.c.5. Procedures for loss of certification. -- If the Director issues a notice of disapproval of a certification application under subparagraph 71.2.c.4.C. or a notice of disapproval of certification status under subparagraph 71.2.c.4.D., then:

71.2.c.5.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), 40 CFR 75.20(h)(4) or 40 CFR 75.21(e) and continuing until the date and hour specified under 40 CFR 75.20(a)(5)(i):

71.2.c.5.A.1. For units that the owner or operator intends to monitor or monitors for NO_X emission rate and heat input rate or intends to determine or determines NO_X mass emissions 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; and

71.2.c.5.A.2. For units that the owner or operator intends to monitor or monitors for NO_X mass emissions using a NO_X pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_X and the maximum potential flow rate of the unit under section 2 of appendix A of 40 CFR Part 75.

71.2.c.5.B. The NO_X authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs 71.2.c.1. and 71.2.c.2.; and

71.2.c.5.C. The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Director's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

71.3. 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 emissions limitation shall meet the applicable general operating requirements of 40 CFR 75.10 and the applicable requirements of 40 CFR 75.19. The owner or operator of such a unit shall also meet the applicable certification and recertification procedures

of subsection 71.2., except that the excepted methodology shall be deemed provisionally certified for use under the NO_X Budget Trading Program as of the following dates:

71.3.a. 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 for the unit, starting on the date of such submission until the completion of the period for the Director's review;

71.3.b. 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 data on an annual basis under subsection 74.4., starting January 1 of the year after the year of such submission until the completion of the period for the Director's review; and

71.3.c. 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 subsection 74.4., starting May 1 of the ozone season after the year of such submission until the completion of the period for the Director's review.

71.4. Certification/recertification procedures for alternative monitoring systems. -- The NO_X authorized account representative of each unit not subject to an Acid Rain emissions limitation for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of 40 CFR Part 75 shall comply with the applicable certification procedures of subsection 71.2. before using the system under the NO_X Budget Trading Program. The NO_X authorized account representative shall also comply with the applicable recertification procedures of subsection 71.2. and 40 CFR 75.20(f).

§45-1-72. Out of Control Periods.

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

72.2. 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 section 71. or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Director will issue a notice of disapproval of the certification status of such system or component. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the Director or the Administrator. By issuing the notice of disapproval, the Director revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the system or component.

§45-1-73. Notifications.

73.1. The NO_X authorized account representative for a NO_X Budget unit shall submit written notice to the Administrator, the appropriate EPA Regional Office and the Director in accordance with 40 CFR 75.61.

73.2. For any unit that does not have an Acid Rain emissions limitation, the Director may waive the requirement to notify the Director in subsection 73.1.

§45-1-74. Recordkeeping and Reporting.

74.1. General provisions.

74.1.a. The NO_X authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of subdivision 10.5.a.

74.1.b. If the NO_X authorized account representative for a NO_X Budget unit subject to an Acid Rain emission limitation who signed and certified any submission that is made under subpart F

or G of 40 CFR Part 75 and that includes data and information required under sections 70. through 76. or subpart H of 40 CFR Part 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72, then the submission must also be signed by the designated representative or the alternative designated representative.

74.2. Monitoring Plans.

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

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

74.3. Certification applications. -- The NO_X authorized account representative shall submit an application to the Administrator, the appropriate EPA Regional Office and the Director within 45 days after completing all initial certification or recertification tests required under section 71. including the information required under subpart H of 40 CFR Part 75.

74.4. Quarterly reports. -- The NO_X authorized account representative shall submit quarterly reports, as follows:

74.4.a. If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NO_X budget unit chooses to meet the annual reporting requirements of sections 70. through 76., the NO_X authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

74.4.a.1. For a unit for which the owner or operator intends to apply or applies for the early reduction credits under section 43., the calendar quarter that includes the date of initial provisional certification under paragraph 71.2.c.3. or subsection 71.3. Data shall be recorded and reported from the date and hour corresponding to the date and hour of provisional certification; or

74.4.a.2. For a unit that commences operation on or before May 1, 2003 and is not subject to paragraph 74.4.a.1., the earlier of the calender quarter that includes the date of initial provisional certification under paragraph 71.2.c.3. or subsection 71.3. or, if the certification tests are not completed by May 1, 2003, the calendar quarter covering May 1, 2003 through June 30, 2003. 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, 2003; or

74.4.a.3. For a unit that commences operation after May 1, 2003, the calendar quarter in which the unit commences operation. Data shall be recorded and reported from the date and hour corresponding to when the unit commences operation;

74.4.b. If a NO_X budget unit is not subject to an Acid Rain emission limitation, then the NO_X authorized account representative shall either:

74.4.b.1. Meet all of the requirements of 40 CFR Part 75 related to monitoring and reporting NO_X mass emissions during the entire year and meet the deadlines specified in subdivision 74.4.a.; or

74.4.b.2. Submit quarterly reports covering the period May 1 through September 30 of each year and including the data described in 40 CFR 75.74(c)(6). The NO_X authorized account representative shall submit such quarterly reports, beginning with:

74.4.b.2.A. For a unit for which the owner or operator intends to apply or applies for early reduction credits under section 43., the calendar quarter that includes the date of initial provisional certification under paragraph 71.2.c.3. or subsection 71.3. Data shall be recorded and reported from the date and hour corresponding to the date and hour of provisional certification; or

74.4.b.2.B. For a unit that commences operation on or before May 1, 2003 and that is not subject to paragraph 74.4.b.1., the calendar quarter covering May 1 through June 30, 2003. 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 paragraph 71.2.c.3. or subsection 71.3. or the first hour of May 1, 2003; or

74.4.b.2.C. For a unit that commences operation after May 1, 2003 and during an ozone season, the calendar quarter in which the unit

commences operation. Data shall be reported from the date and hour corresponding to when the unit commences operation; or

74.4.b.2.D. For a unit that commences operation after May 1, 2003 and not during an ozone season, the calendar quarter covering the first ozone season after the unit commences operation. 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 paragraph 71.2.c.3. or subsection 71.3. or the first hour of May 1 of the first ozone season after the unit commences operation;

74.4.c. The NO_X authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR Part 75 and 40 CFR 75.64.

74.4.c.1. For units subject to an Acid Rain emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR Part 75 for each NO_X Budget unit (or group of units using a common stack) and the data and information required in subpart G of 40 CFR Part 75.

74.4.c.2. For units not subject to an Acid Rain emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR Part 75 for each NO_X Budget unit (or group of units using a common stack); and

74.4.d. Compliance certification. -- The NO_X authorized account representative shall submit to the Director 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:

74.4.d.1. The monitoring data submitted were recorded in accordance with the applicable requirements of sections 70. through 76. and 40 CFR Part 75, including the quality assurance procedures and specifications;

74.4.d.2. For a unit with add-on NO_X emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B of part 75 and the substitute values do not systematically underestimate NO_X emissions; and

74.4.d.3. For a unit that is reporting on an ozone season basis under paragraph 74.4.b.2., the NO_X emission rate and NO_X concentration values substituted for missing data under subpart D of 40 CFR Part 75 are calculated using only values from an ozone season and do not systematically underestimate NO_X emissions.

§45-1-75. Petitions.

75.1. The NO_X authorized account representative of a NO_X Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Administrator requesting approval to apply an alternative to any requirement of sections 70. through 76.

75.1.a. Application of an alternative to any requirement of sections 70. through 76. is in accordance with sections 70. through 76. only to the extent that the petition is approved by the Administrator, in consultation with the Director.

75.1.b. Notwithstanding subdivision 75.1.a. of this section, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR §75.72, the petition is governed by subsection 75.2.

75.2. The NO_X authorized account representative of a NO_X Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Director and the Administrator requesting approval to apply an alternative to any requirement of sections 70. through 76.

75.2.a. The NO_X authorized account representative of a NO_X Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Director 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).

75.2.b. Application of an alternative to any requirement of sections 70. through 76. is in

accordance with sections 70. through 76. only to the extent the petition under subsection 75.2. is approved by both the Director and the Administrator.

§45-1-76. Additional Requirements to Provide Heat Input Data.

76.1. The owner or operator of a NO_X Budget 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 rate at the unit level using the procedures set forth in 40 CFR Part 75.

§45-1-80. Individual Opt-in Applicability.

80.1. A unit that is not a NO_X Budget unit under subsection 4.1., is not a unit exempt under subdivision 4.2.a., vents all of its emissions to a stack and is operating, may qualify to be a NO_X Budget opt-in unit under sections 80. through 88. A unit that is a NO_X Budget unit under subsection 4.1., is covered by an exemption under subdivision 4.2.a. or section 5. that is in effect, or is not operating is not eligible to become a NO_X Budget opt-in unit.

§45-1-81. Opt-in General Requirements.

81.1 Except otherwise as provided in this rule, a NO_X Budget opt-in unit shall be treated as a NO_X Budget unit for purposes of applying sections 1. through 76.

§45-1-82. Opt-in NO_X Authorized Account Representative.

82.1. A unit for which an application for a NO_X Budget opt-in permit is submitted, or a NO_X Budget opt-in unit, located at the same source as one or more NO_X Budget units, shall have the same NO_X authorized account representative as such NO_X Budget units.

§45-1-83. Applying for NO_X Budget Opt-in Permit.

83.1. Applying for initial NO_X Budget opt-in permit. -- In order to apply for an initial NO_X Budget opt-in permit, the NO_X authorized account representative of a unit qualified under section 80. may submit to the Administrator and Director at any time, except as provided under subsection 86.7.:

83.1.a. A complete NO_X Budget permit application under section 22.;

83.1.b. A monitoring plan submitted in accordance with sections 70. through 76.; and

83.1.c. A complete account certificate of representation under section 13., if no NO_X authorized account representative has been previously designated for the unit.

83.2. Duty to reapply. -- Unless the NO_X Budget opt-in permit is terminated or revised under subsection 86.5. or paragraph 87.2.a.1., the NO_X authorized account representative of a NO_X Budget opt-in unit shall submit to the Administrator and the Director a complete NO_X Budget permit application under section 22. to renew the NO_X Budget opt-in permit in accordance with subsection 21.3. and if applicable, an updated monitoring plan in accordance with sections 70. through 76.

§45-1-84. Opt-in Process.

84.1. The Director will issue or deny a NO_X Budget opt-in permit for a unit for which an initial application for a NO_X Budget opt-in permit under section 83. is submitted in accordance with section 20. and the following:

84.2. Interim review of monitoring plan. -- The Director will determine on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_X Budget opt-in permit under section 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 sections 70. through 76. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan;

84.3. If the Director determines that the unit's monitoring plan is sufficient under subsection 84.2. and after completion of monitoring system certification under sections 70. through 76., the NO_X emissions rate and the heat input of the unit shall be monitored and reported in accordance with sections 70. through 76. for one full ozone season during which

percent monitor data availability is not less than 90 percent and during which the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO_X Budget unit" prior to issuance of a NO_X Budget opt-in permit covering the unit;

84.4. Based on the information monitored and reported under subsection 84.3., the Director will calculate the unit's baseline heat input, which will equal the unit's total heat input (in mmBtu) for the ozone season, and the unit's baseline NO_X emissions rate, which will equal the unit's total NO_X mass emissions (in lb) for the ozone season divided by the unit's baseline heat input.

84.5. Issuance of draft NO_X Budget opt-in permit for public comment. -- The Director will issue a draft NO_X Budget opt-in permit for public comment in accordance with section 20.;

84.6. Not withstanding subsections 84.2. through 84.5., if at any time before issuance of a draft NO_X Budget opt-in permit for public comment for the unit, the Administrator or the Director determines that the unit does not qualify as a NO_X Budget opt-in unit under section 80., the Director will issue a draft denial of a NO_X Budget opt-in permit for public comment for the unit in accordance with section 20.;

84.7. Withdrawal of application for NO_X Budget opt-in permit. -- A NO_X authorized account representative of a unit may withdraw its application for an initial NO_X Budget opt-in permit under section 83. at any time prior to the issuance of the initial NO_X Budget opt-in permit. Once the application for a NO_X Budget opt-in permit is withdrawn, a NO_X authorized account representative wanting to reapply must submit a new application for an initial NO_X Budget permit under section 83.; and

84.8. The unit shall be a NO_X Budget opt-in unit and a NO_X Budget unit starting May 1 of the first ozone season starting after the issuance of the initial NO_X Budget opt-in permit by the Director.

§45-1-85. NO_X Budget Opt-in Permit Contents.

85.1. Each NO_X Budget opt-in permit (including any draft or proposed NO_X Budget opt-in permit) will contain all elements required for a complete NO_X Budget opt-in permit application under section 22.

85.2. Each NO_X Budget opt-in permit is deemed to incorporate automatically the definitions of terms under section 2. and upon recordation by the Administrator under sections 50. through 57., sections 60. through 62. or sections 80. through 88., every allocation, transfer or deduction of NO_X allowances to or from the compliance accounts of each NO_X Budget opt-in unit covered by the NO_X Budget opt-in permit or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in unit is located.

§45-1-86. Withdrawal from NO_X Budget Trading Program.

86.1. 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 shall submit to the Administrator and Director 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.

86.2. Conditions for withdrawal. -- Before a NO_X Budget opt-in unit covered by a request under subsection 86.1. may withdraw from the NO_X Budget Trading Program and the NO_X Budget opt-in permit may be terminated under subsection 86.5., the following conditions must be met:

86.2.a. For the ozone season immediately before the withdrawal is to be effective, the NO_X authorized account representative must submit or must have submitted to the Administrator and Director an annual compliance certification report in accordance with section 30.;

86.2.b. If the NO_X Budget opt-in unit has excess emissions for the ozone season immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted 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 is located, the full amount required under subsection 54.4. for the ozone season; and

86.2.c. After the requirements for withdrawal under subdivisions 86.2.a. and 86.2.b. are met, the 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 is located, NO_X allowances equal in number to and allocated for the same or a prior ozone season as any NO_X allowances allocated to that source under section 88. for any ozone season for which the withdrawal is to be effective. The Administrator will close the NO_X Budget opt-in unit's compliance account and will establish and transfer any remaining allowances to a general account specified by the owners and operators of the NO_X Budget opt-in unit.

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

86.4. Notification.

86.4.a. After the requirements for withdrawal under subsections 86.1. and 86.2. are met (including deduction of the full amount of NO_X allowances required), the Director will issue a notification to the Administrator and the NO_X authorized account representative of the NO_X Budget opt-in unit of the acceptance of the withdrawal of the NO_X Budget opt-in unit as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

86.4.b. If the requirements for withdrawal under subsections 86.1. and 86.2. are not met, the Director will issue a notification to the Administrator and the NO_X authorized account representative of the NO_X Budget opt-in unit that the NO_X Budget opt-in unit's request to withdraw is denied. If the NO_X Budget opt-in unit's request to withdraw is denied, the NO_X Budget opt-in unit shall remain subject to the requirements for a NO_X Budget opt-in unit.

86.5. Permit amendment. -- After the Director issues a notification under subdivision 86.4.a. that the requirements for withdrawal have been met, the Director will revise the NO_X Budget permit covering the NO_X Budget opt-in unit to terminate the NO_X Budget opt-in permit as of the effective date specified under subdivision 86.4.a. A NO_X Budget opt-in unit shall continue to be a NO_X Budget opt-in unit until the effective date of the termination.

86.6. Reapplication upon failure to meet conditions of withdrawal. -- If the Director denies the request to withdraw the NO_X Budget opt-in unit, the NO_X authorized account representative may submit another request to withdraw in accordance with subsections 86.1. and 86.2.

86.7. Ability to return to the NO_X Budget Trading Program. -- Once a NO_X Budget opt-in unit withdraws from the NO_X Budget Trading Program and its NO_X Budget opt-in permit is terminated under subsection 86.5., the NO_X authorized account representative may not submit another application for a NO_X Budget opt-in permit under section 83. for the unit prior to the date that is 4 years after the date on which the terminated NO_X Budget opt-in permit became effective.

§45-1-87. Change in Regulatory Status.

87.1. Notification. -- When a NO_X Budget opt-in unit becomes a NO_X Budget unit under subsection 4.1., the NO_X authorized account representative shall notify in writing the Director and the Administrator of such change in the NO_X Budget opt-in unit's regulatory status within 30 days of such change.

87.2. Director's and Administrator's action.

87.2.a.1. When the NO_X Budget opt-in unit becomes a NO_X Budget unit under subsection 4.1., the Director will revise the NO_X Budget opt-in unit's NO_X Budget opt-in permit to meet the requirements of a NO_X Budget permit under section 23. as of an effective date that is the date on which such NO_X Budget opt-in unit becomes a NO_X Budget unit under subsection 4.1.

87.2.a.2.A. The Administrator will deduct from the compliance account for the NO_X Budget unit under paragraph 87.2.a.1. 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 ozone season as:

87.2.a.2.A.1. Any NO_X allowances allocated to the NO_X Budget unit (as a NO_X Budget opt-in unit) under section 88. for any ozone season after the last ozone season during which the unit's NO_X Budget opt-in permit was effective; and

87.2.a.2.A.2. If the effective date of the NO_X Budget permit revision under paragraph 87.2.a.1. is during an ozone season, the NO_X allowances allocated to the NO_X Budget unit (as a

NO_X Budget opt-in unit) under section 88. for the ozone season multiplied by the number of days in the ozone season, starting with the effective date of the permit revision under paragraph 87.2.a.1., divided by the total number of days in the ozone season and rounded to the nearest whole number of NO_X allowances as appropriate.

87.2.a.2.B. The NO_X authorized account representative shall ensure that the compliance account of the NO_X Budget unit under paragraph 87.2.a.1. or the overdraft account of the NO_X Budget source where the unit is located, contains the NO_X allowances necessary for completion of the deduction under subparagraph 87.2.a.2.A. If the compliance account or overdraft account does not contain the necessary NO_X allowances, the Administrator will deduct the required number of NO_X allowances, regardless of the ozone season for which they were allocated, whenever NO_X allowances are recorded in either account.

87.2.a.3.A. For every ozone season during which the NO_X Budget permit revised under paragraph 87.2.a.1. is in effect, the NO_X Budget unit under paragraph 87.2.a.1. will be treated, solely for purposes of NO_X allowance allocations under section 42., as a unit that commenced operation on the effective date of the NO_X Budget permit revision under paragraph 87.2.a.1. and will be allocated NO_X allowances under section 42. The unit's deadline under subsection 84.4. for meeting monitoring requirements in accordance with sections 70. through 76. shall not be changed by the change in the unit's regulatory status or by the revision of the NO_X Budget permit under paragraph 87.2.a.1.

87.2.a.3.B. Notwithstanding subparagraph 87.2.a.3.A., if the effective date of the NO_X Budget permit revision under paragraph 87.2.a.1. is during an ozone season, the following number of NO_X allowances will be allocated to the NO_X Budget unit under paragraph 87.2.a.1. under section 42. for the ozone season: the number of NO_X allowances otherwise allocated to the NO_X Budget unit under section 42. for the ozone season multiplied by the number of days in the ozone season, starting with the effective date of the permit revision under paragraph 87.2.a.1., divided by the total number of days in the ozone season and rounded to the nearest whole number of NO_X allowances as appropriate.

87.2.b.1. When the NO_X authorized account representative of a NO_X Budget opt-in unit does not renew its NO_X Budget opt-in permit under subsection 83.2., the 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 is located, NO_X allowances equal in number to and allocated for the same or a prior ozone season as any NO_X allowances allocated to the NO_X Budget opt-in unit under section 88. for any ozone season after the last ozone season for which the NO_X Budget opt-in permit is effective. The NO_X authorized account representative shall ensure that the NO_X Budget opt-in unit's compliance account or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in unit is located includes the NO_X allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain the necessary NO_X allowances, the Administrator will deduct the required number of NO_X allowances, regardless of the ozone season for which they were allocated, whenever NO_X allowances are recorded in either account.

87.2.b.2. After the deduction under paragraph 87.2.b.1. is completed, the Administrator will close the NO_X Budget opt-in unit's compliance account. If any NO_X allowances remain in the compliance account after completion of such deduction and any deduction under section 54., the Administrator will close the NO_X Budget opt-in unit's compliance account and transfer any remaining allowances to a general account specified by the owners and operators of the NO_X Budget opt-in unit.

§45-1-88. NO_X Allowance Allocations to Opt-in Units.

88.1. NO_X allowance allocation.

88.1.a. By April 1 immediately before the first ozone season for which the NO_X Budget opt-in permit is effective, the Director will determine by order the NO_X allowance allocations for the NO_X Budget opt-in unit for the ozone season in accordance with subsection 88.2.

88.1.b. By no later than April 1, after the first ozone season for which the NO_X Budget opt-in permit is in effect, and April 1 of each year thereafter, the Director will determine by order the NO_X allowance allocations for the NO_X Budget opt-in unit for the next ozone season in accordance with subsection 88.2.

88.1.c. The Director will make available to

the public each determination of NO_X allowance allocations under subdivisions 88.1.a. or 88.1.b. and provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with subsection 88.2. Based on any such objections, the Director will adjust each determination to the extent necessary to ensure that it is in accordance with subsection 88.2.

88.2. For each ozone season for which the NO_X Budget opt-in unit has an approved NO_X Budget opt-in permit, the NO_X Budget opt-in unit will be allocated NO_X allowances in accordance with the following procedures:

88.2.a. The heat input (in mmBtu) used for calculating NO_X allowance allocations will be the lesser of:

88.2.a.1. The unit's baseline heat input determined pursuant to subsection 84.4.; or

88.2.a.2. The unit's heat input, as determined in accordance with sections 70. through 76., for the ozone season in the year prior to the year of the ozone season for which the NO_X allocations are being calculated; and

88.2.b. The Director will allocate NO_X allowances to the NO_X Budget opt-in unit in an amount equaling the heat input (in mmBtu) determined under subdivision 88.2.a. multiplied by the lesser of the unit's baseline NO_X emissions rate (in lb/mmBtu) determined pursuant to subsection 84.3.; or the most stringent state or federal NO_X emission limitation applicable to the unit during the ozone season, divided by 2000 lb/ton and rounded to the nearest whole number of NO_X allowances as appropriate.

§45-1-90. Reserved.

§45-1-100. Requirements for Emissions of NO_X from Cement Manufacturing Kilns.

100.1. NO_X Budget Trading Program eligibility. -- Any cement manufacturing kiln (kiln) subject to this section shall not be eligible for allowances from the state NO_X Trading Program Budget or subject to the state NO_X Budget Trading Program under sections 4. through 88. of this rule.

100.2. Applicability. -- Any owner or operator of the following kilns with process rates of at least the following shall comply with the applicable requirements of this section:

100.2.a. Long dry kilns ≥ 12 TPH;

100.2.b. Long wet kilns ≥ 10 TPH;

100.2.c. Preheater kilns ≥ 16 TPH; and

100.2.d. Precalciner and preheater/precalciner kilns ≥ 22 TPH.

100.3. Standard requirements. -- After May 1, 2004, an owner or operator of any Portland cement kiln subject to this section shall not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with low-NO_X burners, mid-kiln firing or alternative control techniques, subject to approval by the Director, that achieve at least the same emissions decreases as low-NO_X burners or mid-kiln firing.

100.4. NO_X compliance plan. -- Any owner or operator of a source subject to the standard requirements of subsection 100.3. may elect to use NO_X reductions from any non-affected kiln at a source with a Portland cement kiln subject to subsection 100.2. If the owner or operator so elects, he or she must submit for approval to the Director by May 1, 2004 a NO_X compliance plan which demonstrates the method(s) by which the operator will achieve NO_X reductions from non-affected kilns which achieve at least the same emissions decreases set forth in the standard requirements of subsection 100.3.

100.5. Reporting requirements. -- Any owner or operator subject to the requirements of subsection 100.3. shall comply with the following requirements:

100.5.a. By May 1, 2004, submit to the Director and Administrator the identification number and type of each kiln subject to this section, the name and address of the plant where the kiln is located and the name and telephone number of the person responsible for demonstrating compliance with the section; and

100.5.b. Submit a report documenting for that kiln the total NO_X emissions from May 1 through September 30 of each year to the Director and Administrator by October 31 of each year, beginning in 2004.

100.6. Monitoring requirements.

100.6.1. Any owner or operator of an kiln subject to this section shall complete an initial performance test and subsequent annual testing consistent with the requirements of 40 CFR Part 60, appendix A, method 7, 7A,7C, 7D or 7E; and

100.6.2. The operator may use the results of continuous emission monitoring system (CEMS) to replace the annual testing requirements set forth in subdivision 100.6.1. Such equipment shall be installed and operated consistent with sections 70. through 76. and 40 CFR Part 75.

100.7. Recordkeeping requirements. -- Any owner or operator of an kiln subject to this section shall produce and maintain records which shall include, but are not limited to:

100.7.a. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln;

100.7.b. The type of control used for each affected Portland cement kiln;

100.7.c. The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment;

100.7.d. The results of any performance testing;

100.7.e. Daily cement kiln production records; and

100.7.f. All records required to be produced or maintained shall be retained on site for a minimum of 2 years and be made available to the Director or Administrator upon request.

100.8. Exemptions. -- The requirements of subsections 100.3., through 100.7. shall not apply to the following periods of operation:

100.8.a. Start-up and shut-down periods and periods of malfunction, not to exceed 36 consecutive hours; and

100.8.b. Regularly scheduled maintenance activities.