

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FORM #1

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 26

TITLE OF RULE BEING PROPOSED: "NOx Budget Trading Program As A Means Of
Control And Reduction Of Nitrogen Oxides From Electric Generating Units"

DATE OF PUBLIC HEARING: November 28, 2000 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☐ BOTH ☒

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Edward L. Kropp, Chief

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Office of Air Quality

7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

Carrie J. Chambers



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526



West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

October 25, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 45CSR26 - "Control and Reduction of Nitrogen Oxides from
Electric Generating Units"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of Public Hearing on a Proposed Rule."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

Attachment

cc: John Benedict, Deputy Chief, Office of Air Quality
Carrie Chambers, Executive Assistant, DEP

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45CSR26 "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq.

B. SUMMARY OF RULE:

This rule partially fulfills the State's obligations in responding to U.S. EPA's final rule, *Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone* (27 Oct 1998, 63 FR 207 at 57356, herein referred to as the *NO_x SIP Call*). Essentially, the federal rule requires that large emitters of Nitrogen Oxides (NO_x) significantly reduce emissions and constrain them to fixed budgets, starting in 2004 and maintaining them thereafter. Flexibility is built in through "trading" provisions which allow sources to buy/trade emission allocations from other participants. For example, a source which has been unable to achieve the required amount of emission reductions may purchase or trade to obtain the needed emission allocations.

This State rule, 45CSR26, applies to large stationary sources which are Electric Generating Units (EGUs) as defined in the rule. Though 45CSR26 uses control requirements and emission credit transfer procedures similar to the federal presumptions, it may be difficult to interface with the federal program. It requires that EGUs effectively achieve a NO_x emission rate of 0.15 lb NO_x/mmBTU by April 2005 and allows flexibility through emissions trading. Further implementation delays (up to 2008) are permitted for companies which opt to control multiple pollutants or which use innovative technology. To accommodate growth, the proposed rule establishes a more realistic limit on total emissions (a "cap") than the NO_x SIP Call. OAQ is addressing Non-EGUs in a separate rulemaking, 45CSR1.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

U.S. EPA has identified 23 jurisdictions, including West Virginia, which allegedly contribute to ground-level ozone nonattainment in downwind states. U.S. EPA accordingly promulgated federal rules requiring these jurisdictions to submit revisions to their State Implementation Plans (SIPs), including state rules, to reduce NO_x emissions pursuant to §110(a)(2)(D) of the 1990 Clean Air Act Amendments. Originally, States were to submit control plans as revisions to the applicable SIP by September 1999. However, several States, including West Virginia, filed legal challenges to U.S. EPA's rulemaking. A federal court subsequently stayed indefinitely the submittal requirement. In June 2000, the U.S. Court of Appeals for the D.C. Circuit made a final ruling that largely upheld U.S. EPA's action.

Consequently, 19 jurisdictions, including West Virginia are now required to submit SIP revisions by October 30, 2000. However, litigation continues through an appeal to the U.S. Supreme Court. The Division of Environmental Protection, Office of Air Quality is proceeding with the promulgation of this proposed rule which achieves part of the federally mandated reductions, pending the outcome of the legal challenge. If the Court agrees to hear the case and rules in the State's favor, the proposed State rule may be withdrawn or modified accordingly.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

Federal counterparts to this proposed rule exist. Two related, parallel federal rulemakings may impose similar requirements on affected facilities. These include the Federal Implementation Plan (FIP) associated with the NO_x SIP Call and the separate but related rulemaking by U.S. EPA on Petitions filed pursuant to Section 126 of the 1990 Clean Air Act Amendments. The latter became effective on February 17, 2000 and imposes similar requirements regardless of any State action.

Both federal and State rules have averaging or trading provisions that allow sources to vary emission rates. Monitoring, record-keeping, and reporting requirements of the proposed rule and federal counterparts are similar. However, the proposed rule allows an additional year to implement controls (2005 vs. 2004). The proposed rule also permits implementation delays for sources that opt to control multiple pollutants or that use innovative control technologies. Finally, the emissions cap established under the federal rule is based upon a 3 percent growth factor while that of the proposed rule is based on a 20 percent growth factor (1990-2007) plus an additional margin to accommodate new and proposed EGUs. Therefore, the Director has determined that the agency proposed rule is less stringent than the federal counterpart rules.

Proposed development of this rule has been, and continues to be, unusually dynamic. In determining the appropriate level of stringency, the Director originally relied heavily on work completed by the Southeast/Midwest Governors' Ozone Coalition (SE/MW GOC) as well as related photochemical modeling studies. The SE/MW GOC comprised Alabama, Michigan, Ohio, Tennessee, Virginia, and West Virginia and concluded that the NO_x SIP Call is not equitable, not supported by the available science on regional transport and not reflective of the Clean Air Act's approach of allowing states to determine the steps needed to maintain and improve air quality. Among the recommendations was the 65 percent (0.25 lb/mmBTU) control requirement by April 2004 that served as the basis for an earlier version of the proposed rule. For the reasons outlined below, the Director instructed OAQ to reconstruct 45CSR26 to comport with a new Governor's proposal.

The first draft proposed rule was based on an original Governors' Ozone Coalition proposal of a 65 percent reduction and was predicated upon the consensus of six states that electric utilities could not meet the U.S. EPA emission requirement of 0.15 lb per million Btu

(roughly 85 percent off 1990 levels as estimated for the year 2007, with growth, region wide) on the time schedule imposed by U.S. EPA. This coalition assessment was based on the technology available at the time.

Research by the affected facilities, made available late in the West Virginia regulatory development process, showed that new control technologies might make the original emission limit (0.15) feasible. Moreover, these innovative controls had the added potential to reduce sulfur dioxide emissions and some toxic materials, including mercury. The Governor's Office requested additional information. After careful consideration, the Governor directed DEP to rapidly develop a plan which would incorporate the more stringent emission limit and encourage adoption of the innovative technologies.

The OAQ also addressed the difference in potential emissions between the 20 percent growth rate used in the new plan and the 3 percent growth estimated by U.S. EPA. Last summer's (1999) hot weather already required an electricity utilization level for some in-state utilities that exceeded U.S. EPA's projected level for 2007. This fact, in combination with other considerations, indicates that the lower growth estimate for West Virginia is certainly inadequate. U.S. EPA assumed growth rates exceeding 20 percent for many other states, including Kentucky, Maryland, North Carolina and South Carolina.

Though use of innovative technologies may necessitate some delays in implementation, the resulting reductions in NO_x, sulfur dioxide and toxic materials should more than compensate. This holistic approach is more beneficial for the environment and the citizens of West Virginia.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION
ADVISORY COUNCIL:**

At its July 6, 2000 meeting and again at its August 8, 2000 meeting, the Environmental Protection Advisory Council reviewed and discussed the first draft proposed rule. There were no substantive changes as a result of their discussion. (See attached minutes of both meetings.) However, the rule was then significantly revised as described above. The final proposed rule was forwarded to the Council prior to filing. Any recommendations will be submitted to the Director and appropriately considered during the public comment period.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Lisa Dooley
Jacqueline Hallinan
Bill Raney
Rick Roberts
Bill Samples

Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

1) Review and Approval of April 6, 2000 Minutes.

The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public

hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"
- 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"
- 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"
- 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"
- 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"
- 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR30 - "Requirements for Operating Permits"
- 45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"

In discussion of 45CSR1, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO_x SIP Call. Failure of states to respond to the SIP Call will result in a NO_x federal implementation plan or federal program to reduce NO_x emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

45CSR1 establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPS. The model rule incorporates standards to

allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO_x budget-trading program.

John informed the Council that **45CSR15** adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to **45CSR16**, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

45CSR6 prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under **45CSR13**.

45CSR23 - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

45CSR25 - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being shifted to **45CSR34** (which will be discussed later in the meeting). John said this proposed rule amendment is also necessary to maintain consistency with the Office of Waste Management's current rule - **33CSR20**.

45CSR26 (copy not provided for Council at this time) specifically addresses NO_x reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO_x limits,

which is roughly an 85% reduction in NO_x emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO_x limits, or 65% reduction from their 1999 emissions.

45CSR30 establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

45CSR34 - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those

circumstances. However, that should not be that much of a burden since the emissions from a majority (90% ☐) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.

Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

□ 60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to 60CSR4. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

□ 199CSR1 - "Surface Mining Blasting Rule"

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge, the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any

taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in §22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

- 35CSR4 - "Oil and Gas Wells and Other Wells"
- 35CSR7 - "Certification of Gas Wells"

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward.

He said the proposed amendments in 35CSR4 will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

35CSR7 - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Internal Revenue Code. Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.

The following Office of Waste Management rules were discussed:

- 33CSR3 - "Yard Waste Management Rule"
- 33CSR5 - "Waste Tire Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"
- 33CSR32 - "Underground Storage Tank Insurance Fund"

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on 33CSR3. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under 33CSR5. The proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed 33CSR20. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, 33CSR30, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST

systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

33CSR32, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to **33CSR5** (the Waste Tire Disposal rule) was offered by Counsel:

Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.

The following Office of Mining and Reclamation rules were discussed:

- **38CSR2 - "WV Surface Mining Reclamation Rule"**
- **38CSR3 - "Rules for Quarrying and Reclamation"**

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to **38CSR2**, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning **38CSR2**, the following comments were made by Council:

In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation, and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the

point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With, quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000 feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required

to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

August 8, 2000, Conference Call

ATTENDING:

Advisory Council Members

NOT ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Jacqueline Hallinan
Bill Raney

Lisa Dooley
Rick Roberts
Bill Samples
Larry Harris

Environmental Protection:

John Benedict
Jim Mason
Tammy Mowrer

1) Introduction and Review. As all parties were connected on the conference call, Mike Castle called the meeting to order. John Benedict stated that this conference call was in response and follow-up of the July 6th Advisory Council meeting. Every effort was made to contact members of the Advisory Council for their participation in today's conference call, however, due to vacations and various other commitments, the individuals listed above were the only ones able to participate.

2) Discussion of Proposed Rule Amendments – 2001 Legislative Session. John Benedict, Deputy Chief of the Office of Air Quality (OAQ) provided explanation for 45CSR26 – “Control and Reduction of Nitrogen Oxides from Electric Generating Units”. John stated that this rule was drafted in response to U. S. EPA's NOx SIP call for utility sources. 45CSR26 specifically addresses NOx reduction requirements for electric generating units (EGU's). This rule is patterned after Michigan's rule and differs from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule basically requires electric generating units to meet a .15 lb/mmBtu NOx limit, which is approximately an 85% reduction in NOx emissions. The Governor's coalition proposal requires .25 lb/mmBtu NOx limits, or 65% reduction from their 1990 emissions rate. 45CSR26 will be the companion rule to 45CSR1 which estimates NOx reduction requirements for non-EGU sources.

Jim Mason provided summary for each section of the rule. Again, both of these rules have been drafted as a response to EPA's NOx SIP Call. Failure of

states to respond to the SIP call will result in a NOx federal implementation plan or federal program to reduce NOx emissions under Section 126 of the CAA. EPA is now requiring, and the federal court concurred, that states develop rules and meet the conditions of the SIP Call by October 30, 2000. EPA's SIP Call affects major utility sources, large industrial-type boilers (those exceeding 250 lbs/mmBtu), cement plants and later, internal combustion engines.

The OAQ must have a rule in effect before submitting to U. S. EPA on October 30, 2000, therefore, an emergency rule needs to be adopted before the October 30th deadline.

There were no substantive changes or comments as a result of the discussion on 45CSR26 by the Environmental Protection Advisory Council during their teleconference on this date.

Meeting was adjourned.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR26 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units"

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 7012 MacCorkle Avenue, S.E.

Charleston, WV 25304

1. Effect of Proposed Rule	Annual		Fiscal Year		
Estimated Total Cost	Increase	Decrease	Current	Next	Thereafter
	\$69,950	\$ -0-	\$33,300	\$33,600	\$69,950
Personal Services	\$62,370	-0-	\$30,000	\$30,000	\$62,370
Current Expense	\$ 6,980	-0-	\$ 3,300	\$ 3,300	\$ 6,980
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	\$ 600	-0-	-0-	\$ 300	\$ 600
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

Approximately one half of 1 FTE personnel cost plus associated operating and equipment costs are estimated for rule development implementation activities in the current and next fiscal years increasing to 1 FTE personnel costs and associated office and equipment costs per year thereafter for rule implementation.

3. Objectives of these rules:

To respond to U.S. EPA's requirement for a state plan (SIP) to reduce nitrogen oxides emissions from electric utility emission units to mitigate interstate ozone transport.

Appendix B
Fiscal Note For Proposed Rules
Page Two

Rule Title: 45CSR26 - "NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See the Table above (Item 1) for estimated direct cost of rule implementation to WVDEP/OAQ. It is estimated that electricity costs in West Virginia may increase by 3-4% as a result of rule implementation.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

As noted, it is estimated that costs for electricity may be increased by 3-4% as a result of rule implementation. Annualized costs of compliance for electric power generating facilities within West Virginia are estimated to be approximately \$191 million using data provided by the power industry and \$152 million using U.S. EPA estimates. These estimated costs may be significantly reduced under alternative compliance program provisions of the proposed rule which allow delayed compliance deadlines for innovative emissions control technology installation.

C. Economic Impact on Citizens/Public at Large.

It is estimated that electric power costs for residential consumers may increase by 3-4% with implementation of this rule.

Date: October 25, 2000

Signature of Agency Head or Authorized Representative

Barrie J. Chambers

FILED

Oct 25 2 55 PM '00

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

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

SERIES 26
NO_x BUDGET TRADING PROGRAM AS A MEANS OF CONTROL AND REDUCTION OF
NITROGEN OXIDES FROM ELECTRIC GENERATING UNITS

§45-26-1. General.

1.1. Scope. -- This rule establishes general provisions and the definitions, applicability, permitting, allowance, excess emissions and monitoring provisions for a state NO_x Budget Trading Program as a means of control and reduction of nitrogen oxides (NO_x), an ozone precursor from electric generating units. 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 76. of this rule and 40 CFR Part 51. This rule follows the intent of 40 CFR Part 96 for electric generating units.

1.2. The owner or operator of a fossil fuel-fired electric generating unit shall comply with applicable requirements of this rule.

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

1.4. Filing Date. --

1.5. Effective Date. --

§45-26-2. 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. "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.

2.9. "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.

2.10. "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. or section 5., 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. or section 5., 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.

2.11. "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. or section 5., 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. or section 5., 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.

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

2.13. "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.

2.14. "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:

- 2.14.a. Flow monitor;
- 2.14.b. NO_x pollutant concentration monitors;
- 2.14.c. Diluent gas monitor (oxygen or carbon dioxide);
- 2.14.d. A continuous moisture monitor; and
- 2.14.e. An automated data acquisition and handling system.

2.15. "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.

2.16. "Electric generating unit" means a fossil fuel-fired stationary boiler, combustion turbine or combined cycle system which serves a generator with a nameplate capacity greater than 25 MW_e.

2.17. "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.

2.18. "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.

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

2.20. "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.

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

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

2.22.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;

2.22.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

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

2.22.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

2.22.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.

2.23. "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.

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

2.25. "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.

2.26. "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.

2.27. "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:

2.27.a. For the life of the unit;

2.27.b. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

2.27.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.

2.28. "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.

2.29. "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 CO₂) or the minimum oxygen concentration (in percent O₂).

2.30. "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 O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit startup, shutdown and upsets.

2.31. "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.

2.32. "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.

2.33. "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.

2.34. "Nameplate capacity" means the maximum electrical generating output (in MW) 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.

2.35. "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.

2.36. "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. or 43., "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.

2.37. "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.

2.38. "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.

2.39. "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.

2.40. "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.

2.41. "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.

2.42. "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.

2.43. "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.

2.44. "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.

2.45. "NO_x Budget source" means a source that includes one or more NO_x Budget units.

2.46. "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.

2.47. "NO_x Budget unit" means an applicable unit under section 4. that is subject to the NO_x Budget Trading Program under this rule.

2.48. "Operator" means any person who operates, controls or supervises a NO_x Budget unit or a NO_x Budget source and shall include, but not be limited to, any holding company, utility system or plant manager of such a unit or source.

2.49. "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.

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

2.50.a. Any holder of any portion of the legal

or equitable title in a NO_x Budget unit; or

2.50.b. Any holder of a leasehold interest in a NO_x Budget unit; or

2.50.c. Any purchaser of power from a NO_x Budget unit 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

2.50.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.

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

2.52. "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.

2.53. "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.

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

2.55. "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.

2.56. "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.

2.57. "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.

2.58. "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.

2.59. "Shutdown" means: the period of time a unit is cooled from its normal operating temperature to cold or ambient temperature.

2.60. "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."

2.61. "Startup" means: the period of time a unit is heated from cold or ambient temperature to its normal operating temperature as specified by the manufacturer.

2.62. "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.

2.63. "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.

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

2.64.a. In person;

2.64.b. By United States Postal Service; or

2.64.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.

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

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

2.67. "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.

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

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

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

2.71. 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.

§45-26-3. 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

CO₂ - carbon dioxide

NO_x - nitrogen oxides

O₂ - oxygen.

§45-26-4. NO_x Budget Trading Program Applicability.

4.1. The following electric generating units in West Virginia (or units, as defined in subsection 2.68.) 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. For units that commenced operation before January 1, 1997, a unit which served during 1995 or 1996 a generator that had a nameplate capacity greater than 25 MW_e and produced electricity for sale under a firm contract to the electric grid;

4.1.b. For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit which served during 1997 or 1998 a generator that had a nameplate capacity greater than 25 MW_e and produced electricity for sale under a firm contract to the electric grid; and

4.1.c. For units that commence operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than 25 MW_e and produces electricity for sale.

4.2.a. Notwithstanding subsection 4.1., a unit under subdivisions 4.1.a., 4.1.b. or 4.1.c. 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 subdivisions 4.1.a., 4.1.b. or 4.1.c. 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., 42.2. 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., 42.2. 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., 42.2. 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., 42.2. 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 2005; 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 2005.

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 commercial operation on the date the unit loses its exemption.

§45-26-5. Retired Unit Exemption.

5.1. This section applies to any NO_x Budget unit that is permanently retired.

5.2.a. Any NO_x Budget 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, 2005 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, 2005 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.

§45-26-6. 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.

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, 2005 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. and sections 60. through 62.

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. or sections 60. through 62., 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. or sections 70. through 76.

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.

§45-26-7. 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.

§45-26-10. 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, notwithstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the 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.

§45-26-11. 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.

§45-26-12. 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.

§45-26-13. 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.

§45-26-14. 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.

§45-26-20. 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. 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. 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.

§45-26-21. 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, 2005; 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, 2005 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, 2005; 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, 2005 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.

§45-26-22. 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.; and

22.1.c. The standard requirements under section 6.

§45-26-23. 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. or sections 60. through 62., 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.

§45-26-24. 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.

§45-26-30. 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.

§45-26-31. 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.

§45-26-40. 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 33688 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 42.2. for the ozone season and whose NO_x emission limitation (in tons of NO_x) is not included in the amount calculated under subparagraph 42.4.e.2.B. for the ozone season.

§45-26-41. Timing Requirements for State NO_x Allowance Allocations.

41.1. By April 1, 2002, 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 42.2., for the ozone seasons in 2005 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 42.2. 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 42.2. 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, 2005 and April 1 of each year thereafter, the Director will determine by order and submit to the Administrator the NO_x allowance allocations from the allocation set-aside, 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.

§45-26-42. 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., the average of the two highest amounts of the unit's heat input for the ozone seasons 1995 through 1999.

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. For each block of ozone seasons specified in subsections 41.1., 41.2. and 41.3., the Director will allocate to all NO_x Budget units under subsection 4.1. 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 88.25 percent of the portion of the state trading program budget under section 40. covering such units. The Director will allocate in accordance with the following procedures:

42.2.a. The Director will allocate NO_x allowances to each NO_x Budget unit under subsection 4.1. for each ozone season in an amount that does not exceed the lesser of:

42.2.a.1. 0.15 lb/mmBtu multiplied by the heat input determined under subdivision 42.1.a., divided by 2,000 lb/ton and rounded to the nearest whole number of NO_x allowances as appropriate; or

42.2.a.2. The unit's most stringent state or federal NO_x emission limitation multiplied by the heat input determined under subdivision 42.1.a., divided by 2,000 lb/ton and rounded to the nearest whole number of NO_x allowances as appropriate.

42.2.b. If the initial total number of NO_x allowances allocated to all NO_x Budget units under paragraphs 4.1.a., 4.1.b. or 4.1.c. for an ozone season under subdivision 42.2.a. does not equal 88.25 percent of the portion of the state 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 42.2.a. so that the total number of NO_x allowances allocated equals 88.25 percent of such portion of the state trading program budget. This adjustment will be made by: multiplying each unit's allocation by 88.25 percent of such portion of the state trading program budget; dividing by the total number of NO_x allowances allocated under subdivision 42.2.a. for the ozone season; and rounding to the nearest whole number of NO_x allowances as appropriate.

42.3. Reserved.

42.4. New source NO_x allocation set-aside -- For each ozone season under subsection 41.4., the Director

will allocate NO_x allowances from the allocation set-aside 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 11.75 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 from the allocation set-aside 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. In the NO_x allowance allocation request under subdivision 42.4.b., the NO_x authorized account representative for a NO_x Budget unit under subsection 4.1. may request for the ozone season NO_x allowances in an amount that does not exceed the lesser of:

42.4.c.1. 0.15 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the ozone season starting with the day in the ozone season on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton and rounded to the nearest whole number of NO_x allowances as appropriate; or

42.4.c.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 3,672 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 2,000 lb/ton and rounded to the nearest whole number of NO_x allowances as appropriate.

42.4.d. Reserved.

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.c. 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 subsection 4.1. = (unit's NO_x allowances allocated for ozone season) - [(unit's actual ozone season heat input X the lessor of 0.15 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. Reserved.

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 42.2. 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 88.25 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 42.2. 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.

§45-26-43. Compliance Supplement Pool.

43.1. For any NO_x Budget unit that reduces its NO_x emission rate in the 2001, 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 2000 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 2000 ozone season and the unit must be in full compliance with any applicable state or federal NO_x emission control requirements during 2000 through 2004;

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 2000 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 2001, 2002 or 2003.

43.1.d.1. In the early reduction credit request, the NO_x authorized account representative 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:

43.1.d.2.A. November 1, 2001, for reductions made in the 2001 ozone season; or

43.1.d.2.B. November 1, 2002, for reductions made in the 2002 ozone season; or

43.1.d.2.C. November 1, 2003, for reductions made in the 2003 ozone season.

43.2.a. By February 1, 2002, the Director will make available to the public a statement of the total number of early reduction credits requested by NO_x Budget units for the 2001 ozone season;

43.2.b. By February 1, 2003, the Director will make available to the public a statement of the total number of early reduction credits requested by NO_x Budget units for the 2002 ozone season; and

43.2.c. By 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 for the 2003 ozone season.

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. The Director shall allocate from the compliance supplement pool 16,709 NO_x allowances

for early reduction credit requests over three years, as follows:

43.3.b.1. Not more than one half of the early reduction credits set forth in 43.3.b. for early reduction credit requests made in the 2001 ozone season;

43.3.b.2. Not more than one half of the early reduction credits set forth in 43.3.b. for early reduction credit requests made in the 2002 ozone season; and

43.3.b.3. Any early reduction credits not allocated pursuant to subdivisions 43.3.b.1. or 43.3.b.2. for early reduction credit requests made in the 2003 ozone season.

43.3.c. If the number of early reduction credits requested for reductions achieved in the 2001, 2002 or 2003 ozone seasons is less than or equal to the number of early reduction credit NO_x allowances designated for that ozone season in subsections 43.3.b.1. and 43.3.b.2., the Director will allocate to each NO_x Budget unit one NO_x allowance for each authorized early reduction credit request (as adjusted under subdivision 43.3.a.);

43.3.d. If the number of early reduction credits requested for a reduction achieved in the 2001, 2002 or 2003 ozone seasons is greater than the number of early reduction credit NO_x allowances designated for that ozone season in subsections 43.3.b.1., 43.3.b.2. and 43.3.b.3., 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 2001, 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 2001, 2002 and 2003 in early reduction credit requests under subsections 43.1., as adjusted under subdivision 43.3.a.;

43.3.e. The Director will determine by order the allocations under subdivisions 43.3.c. or 43.3.d. and notify the account representative submitting an early reduction credit request for the subsequent ozone season of the number of early reduction credit allowances that will be allocated to each NO_x Budget unit for that ozone season as follows:

43.3.e.1. By March 1, 2002 for early reduction credits requested and earned in the 2001 ozone season;

43.3.e.2. By March 1, 2003 for early reduction credits requested and earned in the 2002 ozone season; and

43.3.e.3. By March 1, 2004 for early reduction credits requested and earned in the 2003 ozone season.

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

43.3.h. Early reduction credit NO_x allowances recorded under subdivision 43.3.g. may be deducted for compliance under section 54. for the ozone season in 2005 or 2006. Notwithstanding subsection 55.1., the Administrator will deduct as retired any NO_x allowance that is recorded under subdivision 43.3.g. and that is not deducted for compliance under section 54. for the ozone season in 2005 or 2006; and

43.3.i. NO_x allowances recorded under subdivision 43.3.g. are treated as banked allowances in 2006 for the purposes of subsection 54.6. and subdivision 55.1.b.

§45-26-50. 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. and deductions or transfers of NO_x allowances pursuant to sections 31., 54. and 56. or sections 60. through 62. 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.

§45-26-51. 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, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the 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.

§45-26-52. 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.

§45-26-53. Recordation of NO_x Allowance Allocations.

53.1. 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.

53.2. 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.

53.3. 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.

53.4. By May 1, 2005, the Administrator will record the NO_x allowances for 2008 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.

53.5. Each year starting with 2006, 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; and

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.

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.

§45-26-54. 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.;

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.; 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 2007, 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.

§45-26-55. 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. or sections 60. through 62.; 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.

§45-26-56. 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.

§45-26-57. 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.

§45-26-60. 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.

§45-26-61. 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.

§45-26-62. 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.

§45-26-70. 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:

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, 2004 and that is not subject to or does not meet the deadline under subdivision 70.2.a., by May 1, 2004;

70.2.c. For the owner or operator of a NO_x Budget unit under subsection 4.1. that commences operation on or after January 1, 2004 and that reports on an annual basis under section 74.4. by the later of

the following dates:

70.2.c.1. May 1, 2004; or

70.2.c.2. 90 days after the date on which the unit commences commercial operation.

70.2.d. For the owner or operator of a NO_x Budget unit under subsection 4.1. that commences operation on or after January 1, 2004 and that reports on an ozone season basis under paragraph 74.4.b.2., by no later than 90 days after the date on which the unit commences commercial 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.e. Reserved.

70.2.f. Reserved.

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.c. or 70.2.d. 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; and

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.c. or 70.2.d. 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.

70.3. Reporting data prior to initial certification. -- The owner or operator of a NO_x Budget unit under subdivisions 70.2.c. or 70.2.d. 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.

§45-26-71. 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).

§45-26-72. 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.

§45-26-73. 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.

§45-26-74. 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, 2004 and is not subject to paragraph 74.4.a.1., the earlier of the calendar 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, 2004, the calendar quarter covering May 1, 2004 through June 30, 2004. 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, 2004; or

74.4.a.3. For a unit that commences operation after May 1, 2004, 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, 2004 and that is not subject to paragraph 74.4.b.1., the calendar quarter covering May 1 through June 30, 2004. 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, 2004; or

74.4.b.2.C. For a unit that commences operation after May 1, 2004 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, 2004 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.

§45-26-75. 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.

§45-26-76. 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.

§45-26-80. Alternative Compliance Plan.

80.1. The owners and operators of any NO_x Budget unit may develop a proposed alternative compliance plan for that unit based on the use of innovative air pollution control technology or methodology that achieves the multi-pollutant reduction requirements of this section. "Innovative air pollution control technology or methodology" shall not include selective catalytic reduction or selective non-catalytic reduction technologies available on the effective date of this rule, low-NO_x burners, firing or co-firing of natural gas.

80.2. The NO_x authorized account representative of a NO_x Budget unit may petition the Director for approval of a proposed alternative compliance plan. The proposed alternative compliance plan shall include, but not be limited to, the following:

80.2.a. A detailed description of the innovative air pollution control technology or methodology to be employed. The owner and operator must document that installation of innovative air pollution control technology or methodology will significantly reduce the amount of post-combustion air pollutant emissions;

80.2.b. A schedule for development and implementation of the innovative air pollution control technology or methodology, including milestones for completing engineering design, development, testing, installation and operation;

80.2.c. 2001 baseline emissions data for each air pollutant to be reduced; and

80.2.d. An innovative air pollution control technology or methodology manufacturer's performance guarantee for each air pollutant to be reduced. Such performance guarantee may include percent removal efficiency, percent emission reduction or maximum emission rate.

80.3. The proposed alternative compliance plan petition shall be submitted to the Director on or before the date of filing of the NO_x Budget permit application as provided in subsection 21.2.

80.4. Within six (6) months of receipt of a proposed alternative compliance plan, the Director shall either:

80.4.a. Provide a written request for any additional information the Director may require for determination of whether the use of innovative air pollution control technology or methodology achieves the multi-pollutant reduction requirements of this section;

80.4.b. Issue an alternative compliance plan permit to the owner and operator of the NO_x Budget unit in accordance with subsection 80.5.; or

80.4.c. Provide written notification to the NO_x authorized account representative disapproving the proposed alternative compliance plan petition.

80.5. Alternative compliance plan permit contents.
-- The alternative compliance plan permit shall include, but not be limited to, the following:

80.5.a. An emission limit and performance standard for each air pollutant identified in the alternative compliance plan to be reduced by the innovative air pollution control technology or methodology;

80.5.b. The alternative compliance plan permit issuance date;

80.5.c. The effective date of the alternative compliance plan permit shall be May 1 of the ozone season following the proposed date of commencement of operation of the innovative air pollution control technology or methodology, but shall not be later than May 1, 2008;

80.5.d. The owner and operator shall be subject to the requirements of this rule upon the effective date of the alternative compliance plan permit;

80.5.e. The owner and operator, and to the extent applicable the NO_x authorized representative of a NO_x Budget unit, shall comply with the NO_x monitoring, recordkeeping and reporting requirements as provided in sections 70. through 76. and the NO_x and SO₂ monitoring, recordkeeping and reporting requirements as provided in 40 CFR Part 75; and

80.5.f. The owner and operator shall conduct or have conducted annual stack tests to demonstrate compliance with the alternative compliance plan permit limitations of each pollutant other than NO_x and SO₂ established in subdivision 80.5.a. Such stack tests shall be conducted in accordance with the appropriate EPA test method established in 40 CFR Part 60, Appendix B, or other EPA test method approved by the Director.

80.5.f.1. For any compliance test to be conducted, the owner and operator shall submit a test protocol to the Director at least thirty (30) calendar days prior to the scheduled date of the test(s). Such compliance test protocol shall be in a format approved by the Director and subject to approval by the Director. The NO_x authorized account representative shall notify the Director at least fifteen (15) calendar days in advance of actual compliance test dates and times during

which the test(s) will be conducted;

80.5.f.2. A compliance test report providing the compliance test results in a format approved by the Director and any additional information that the Director may require shall be submitted to the Director within sixty (60) days, or within such other time period as requested and approved by the Director, of the completion of the compliance testing; and

80.5.f.3. The Director may require the use of CEMS to monitor air pollutant emissions.

80.6. Upon issuance of an alternative compliance plan permit, the owner and operator of a NO_x Budget unit shall be exempt from the requirement to hold NO_x allowances for compliance deductions under section 54., as specified in subdivision 6.3.a. This exemption shall expire upon the effective date of the alternative compliance plan permit.

80.7. Performance standards for innovative air pollution control technology or methodology. -- The Director shall not approve a petition for an alternative compliance plan that does not meet the following minimum performance standards (percent removal efficiency or percent emission reduction from 2001 emissions):

<u>Air Pollutant</u>	<u>Performance Standard</u>
Hg	50%
SO ₂	50%

80.8. The Administrator shall deduct as retired all NO_x allowances allocated pursuant to section 42. to a NO_x Budget unit for which an alternative compliance plan permit has been issued for any ozone season for which the unit is eligible for the exemption set forth in subsection 80.6.

80.9. The Director is authorized to create an alternative compliance pool of NO_x allowances which shall not exceed 3500 tons. Such NO_x allowances shall be allocated to those units for which an alternative compliance plan permit has been issued. NO_x allowances allocated by the Director under this section shall be recorded in the general account for that owner and operator in the same manner as provided in section 53., and be available for use by the owner and operator in the NO_x Budget Trading Program in the same manner and under the same conditions as NO_x allowances from the compliance supplement pool as set forth in section 43.

80.9.a. The number of NO_x allowances to be created for the alternative compliance pool shall be determined as follows:

Maximum potential alternative compliance pool = Total early reduction credits requested by all NO_x Budget units - total allowances in the compliance supplement pool.

80.9.a.1. If the maximum potential alternative compliance pool is greater than or equal to 3500, then the number of NO_x allowances in the alternative compliance pool is equal to 3500; and

80.9.a.2. If the maximum potential alternative compliance pool is less than 3500, then the number of NO_x allowances in the alternative compliance pool is equal to maximum potential alternative compliance pool.

80.9.b. The NO_x authorized account representative of a NO_x Budget unit for which an alternative compliance permit has been issued may submit to the Director a request, in writing or in a format specified by the Director, to be allocated NO_x allowances from the alternative compliance pool. The NO_x allowance allocation request must be submitted to the Director by:

80.9.b.1. November 1, 2001, for reductions made in the 2001 ozone season; or

80.9.b.2. November 1, 2002, for reductions made in the 2002 ozone season; or

80.9.b.3. November 1, 2003, for reductions made in the 2003 ozone season.

80.9.c. In the NO_x allowance allocation request under subdivision 80.9.b., the authorized account representative for a Budget unit for which an alternative compliance plan permit has been issued may request NO_x allowances in an amount that does not exceed the number of early reduction credits requested minus the number of NO_x allowances received from the compliance supplement pool.

80.9.d. Upon receipt of the NO_x allowance allocation request, the Director will make any necessary adjustments to the request to ensure the requirements of subdivision 80.9.c. are met.

80.9.e. The Director will determine the sum of

the NO_x allowances requested (as adjusted under subdivision 80.9.d.) in all NO_x allowance requests under subdivision 80.9.b.

80.9.e.1. If the number of NO_x allowances in the alternative compliance pool (as determined under subdivision 80.9.a.) is greater than the amount of NO_x allowances under subdivision 80.9.e., the Director will allocate the amount of NO_x allowances requested (as adjusted under subdivision 80.9.d.) to the NO_x Budget unit for which the NO_x allocation request was submitted.

80.9.e.2. If the number of NO_x allowances in the alternative compliance pool is less than the amount under subdivision 80.9.e., the Director will allocate to the NO_x Budget unit the amount of NO_x allowances requested multiplied by the number of NO_x allowances in the alternative compliance pool divided by the amount of NO_x allowances determined in subdivision 80.9.e., rounded to the nearest whole number.

80.10. The owner and operator of a NO_x Budget unit, for which an alternative compliance plan permit has been issued, that does not meet all terms and conditions of the alternative compliance permit shall:

80.10.a. Hold NO_x allowances, in the unit's compliance account or the overdraft account of the source where the unit is located, to cover all NO_x emissions in excess of the number of NO_x allowances allocated to the unit and retired under subsection 80.8. for all ozone seasons during which the NO_x Budget unit was eligible for the exemption set forth in subsection 80.6., as of the NO_x allowance transfer deadline, specified in subdivision 54.1, for the first ozone season after the effective date of the alternative compliance plan permit; and

80.10.b. Hold NO_x allowances equal to the number of NO_x allowances allocated to the NO_x Budget unit from the alternative compliance pool; and

80.11. The requirement to hold NO_x allowances under subdivisions 80.10.a. and 80.10.b. is in addition to the requirement to hold NO_x allowances under subdivision 6.3.a.

80.12. Compliance. -- Deductions for compliance, deductions for excess emissions and violations under subsection 80.10. shall be determined in accordance with the provisions of section 54.