

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

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SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

CITE AUTHORITY: W. Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES  NO

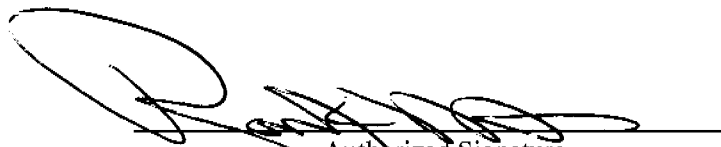
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

TITLE OF RULE BEING AMENDED: REPEAL - NOx Budget Trading Program as a Means of Control and  
Reduction of Nitrogen Oxides from Electric Generating Units

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature



e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 29, 2008

f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

John A. Benedict, Director  
601 57th Street, S.E.  
Charleston, WV 25304  
Phone: (304) 926-0499 ext. 1966

Fax: (304) 926-0488

John.A.Benedict@wv.gov

g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

See "f" above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY**

**BRIEFING DOCUMENT**

**Rule Title:** 45CSR26 - "NO<sub>x</sub> Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units"

**A. AUTHORITY:** W.Va. Code §22-5-4

**B. SUMMARY OF RULE:**

The Department of Environmental Protection is proposing to repeal NO<sub>x</sub> SIP Call rule 45CSR26. This rule contains ozone season NO<sub>x</sub> reduction requirements which apply to electric generating units which have an electric generating capacity greater than 250 megawatts.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

This rule is being repealed pursuant to a requirement under the federal Clean Air Interstate Rule (CAIR), as the CAIR ozone season NO<sub>x</sub> reduction program under 45CSR40 will subsume the NO<sub>x</sub> SIP Call program as of May 1, 2009. However, on July 11, 2008, the D.C. Court of Appeals rendered a decision to vacate CAIR. The DEP acknowledges the intimate relationship between 45CSR1, 45CSR26 and the seasonal NO<sub>x</sub> component of the CAIR. The DEP intends to withdraw the repeals of 45CSR1 and 45CSR26 if the relevant requirements of CAIR cannot be salvaged in a timely manner. However, because of the extension of the time to file petitions for rehearing or rehearing en banc, a mandate to vacate the Clean Air Interstate Rule (CAIR) has not yet been ordered by the U.S. District Court of Appeals. Therefore the vacatur is not in effect at this time. There remains considerable uncertainty regarding the CAIR vacatur and its substantial ramifications. This issue has attracted national attention and could result in potential congressional action. DEP believes it prudent to wait until a more definitive indication of CAIR's fate is recognized. Depending on future information regarding the vacatur of CAIR, the department may subsequently withdraw the proposed repeal of 45CSR1 in accordance with WV Code §29A-3-14.

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

Because repeal of the rule is a federal requirement under CAIR, no determination of stringency is required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that the repeal of 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 June 24, 2008 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Tuesday, June 24, 2008

601 57<sup>th</sup> Street, SE, Charleston, WV

West Virginia Room – 3<sup>rd</sup> Floor

**IN ATTENDANCE:**

***Members of the Council:***

Jackie Hallinan  
Karen Price  
Bill Raney  
Rick Roberts

***DEP:***

|                   |  |
|-------------------|--|
| Randy Huffman     | Cabinet Secretary  |
| Lisa McClung      | Deputy Cabinet Secretary and Director,<br>Division of Water and Waste Management |
| Raymond Franks II | General Counsel  |
| Karen Watson      | Associate General Counsel  |
| Kathy Cosco       | Communications Director  |
| Pam Nixon         | Environmental Advocate   |
| Ken Politan       | Mining & Reclamation   |
| Lewis Halstead    | Mining & Reclamation   |
| Charlie Sturey    | Mining & Reclamation   |
| Carroll Cather    | Water & Waste Management   |
| Don Martin        | Land Restoration   |
| Brian Long        | Water & Waste Management   |
| Dan Arnold        | Water & Waste Management   |
| Mike Zeto         | Environmental Enforcement  |
| Terrie Sangid     | Water & Waste Management   |
| Jim Mason         | Air Quality  |
| Mike Johnson      | Water & Waste Management   |
| Kathy Emery       | Water & Waste Management   |
| Scott Mandirola   | Water & Waste Management   |

***Visitors:***

|             |                                   |
|-------------|-----------------------------------|
| Tom Boggs   | Chamber of Commerce               |
| Don Garvin  | WV Environmental Council          |
| Ruth Lemmon | WV Auto/Truck Dealers Association |

## **OLD BUSINESS:**

Secretary Huffman called the meeting to order at 1:35 p.m., and he announced that Members Lisa Dooley and Larry Harris would not be attending. On motion made by Mr. Raney and seconded by Ms. Hallinan, the Council approved the minutes from the March 18, 2008 meeting. Secretary Huffman then ceded the floor to Mr. Franks.

## **NEW BUSINESS:**

Mr. Franks noted that for the 2009 regular legislative session, DEP was proposing changes to 20 rules, grouped by Division for presentation to the Council. Depending on who had shepherded the rule through its initial drafting, either Mr. Franks or Ms. Watson would lead the discussion, with program administrators available to assist in answering the Council's questions.

Ms. Watson presented 60 CSR 3, the "Brownfields" Rule. Ms. Watson explained that the Rule was currently pending before the Secretary of State for authorization as an emergency rule, and that the proposed changes included adjustments to the "de minimis" table and enhancing DEP's flexibility in obtaining risk assessments.

Ms. Price referred to a letter recently sent to DEP seeking clarification of the Rule's provisions concerning land use covenants and long-term maintenance agreements. Secretary Huffman stated that the letter would be retrieved and the issue noted for further consideration by the agency.

Mr. Raney inquired whether the Council could recommend changes to the rules as presented. Ms. Watson responded in the affirmative. Mr. Raney then asked whether written comments, such as those submitted by Mr. Harris prior to the meeting, would be appended to the minutes. Mr. Franks responded in the negative, and Ms. Watson expounded that Mr. Harris's comments would be summarized and addressed orally during the discussion of the particular rules involved.

Mr. Franks then presented 38 CSR 2, the Surface Mining Reclamation Rule. Mr. Franks explained that the proposed changes would expand the Secretary's oversight of "approved persons" authorized to render technical certifications contained within mining permit applications, and would clarify certain collateral activities as being within the scope of requests for incidental boundary revisions to existing permits. Mr. Franks also noted that the proposed Rule would set forth more relevant and exacting criteria for the Secretary to consider in evaluating applications for revisions.

Mr. Raney inquired generally about the provisions with respect to approved persons. Secretary Huffman replied that the increased oversight is necessary to improve the initial quality of the permit applications, such that the delays occasioned by subsequent corrections would be reduced or eliminated. Mr. Raney asked whether approved persons could include anyone other than engineers, and Mr. Halstead responded that the definition extended to surveyors and geologists. Mr. Raney noted the need to establish a procedure for suspension or revocation to limit the agency's unfettered discretion, to which Secretary Huffman and Mr. Franks replied that the Rule provided for notice and hearing prior to curtailing the privileges of anyone on the approved-person list.

Ms. Watson presented 47 CSR 30, establishing NPDES requirements for coal mining facilities. Ms. Watson explained that the proposed changes were relatively minor, designed to enhance consistency with the non-coal rule, to allow for digital signatures, and to permit correction of clerical errors.

The Council then considered the Air Quality rules. Mr. Franks presented 45 CSR 1 and 45 CSR 26, relating to control and reduction of nitrogen oxides from, respectively, non-electric and electric generating units, the latter by means of a budget trading program. The rules are to be repealed in their entireties, and Mr. Mason explained that both are being subsumed within the Clean Air Interstate Rule program.

Mr. Franks then presented 45 CSR 8, the Ambient Air Quality Rule. Mr. Franks explained that the 1-hour primary and secondary ozone standards were being replaced with 8-hour standards, with the maximum tolerance being reduced slightly. Mr. Raney inquired as to the practical effect of the proposed change, particularly with regard to whether non-compliance areas within the State might be expanded. Mr. Mason replied that an expansion might occur, but that it was difficult to predict at this early stage. Mr. Mason added that the time-period increase would inevitably lead to more accurate measurements.

Ms. Watson presented 45 CSR 13, governing permits for constructing and modifying non-major stationary sources of air pollutants. Ms. Watson explained that the Rule was being amended to reflect the recent statutory changes reducing the lag time for issuing permits and authorizing certain pre-permit construction. It was noted that Mr. Harris had submitted in writing his concern that courts would be loath to enforce agency cease-and-desist orders based on defects discovered during the permitting process after construction had already begun. Ms. Watson pointed out that the statute had been carefully crafted to avoid facile invocation of detrimental reliance, with Mr. Franks observing that the Rule strove to conform to the statute. Ms. Price wondered whether one or more of the timeframe provisions included within the existing Rule had been inadvertently omitted from the proposed version. Ms. Watson responded that the Rule had been carefully checked for completeness, but that she would once again verify the language to assure its accuracy.

Mr. Franks presented 45 CSR 14, governing permits for constructing and significantly modifying major stationary sources of air pollutants. Mr. Franks explained that references to pollution control projects and clean units were deleted in accordance with a federal appellate court decision vacating those provisions.

Mr. Franks went on to present 45 CSR 16, 45 CSR 25, and 45 CSR 34, relating respectively to performance standards for new stationary sources, pollution from hazardous waste treatment, storage, and disposal facilities, and emission standards for hazardous air pollutants. Mr. Mason noted that the changes incorporate revisions to the Rules' federal counterparts, except that some of the new standards were not incorporated within 45 CSR 34, because they constituted unfunded mandates. Mr. Garvin was recognized, and he asked whether the failure to incorporate equated to a lack of regulation. Mr. Mason responded in the negative, explaining that the monitoring and regulation would be performed by the federal government. Mr. Garvin inquired as to the affected industries, and Mr. Mason referred to a list including smaller gas facilities and paint-stripping shops.

Ms. Watson presented 45 CSR 37, detailing the budget trading program to reduce mercury emissions. Ms. Watson explained that the rule is being repealed as inconsistent with a federal appellate court decision, pending alternative action by the EPA. Mr. Garvin inquired whether the Rule repealed two years ago would be reinstated upon revocation of the current version, to which Ms. Watson and Mr. Franks replied that it would not, if there had indeed been a previous rule in place, which was somewhat in question. Mr. Mason explained that mercury emissions would be monitored and regulated as usual, except that budget trading would not be available as a method of reduction. He also stated that there have been discussions on a national level as to whether to reinstate the federal mercury monitoring requirements.

The Council then turned its attention to the Water and Waste Management Rules. Ms. Watson presented 33 CSR 20, governing hazardous waste management systems. Ms. Watson explained that the Rule incorporated by reference its federal counterpart, the most salient change to which is its attempt to reduce disposal by permitting facilities to stage hazardous waste for three days pending recycling. Mr. Raney asked whether three days was sufficient time, and Mr. Cather responded in the affirmative.

Mr. Franks presented 33 CSR 24, the Hazardous Waste Management Fee Rule. Mr. Franks explained that increases to the fee assessments are necessary to sustain the underlying Fund by ensuring sufficient matching revenue for federal grants. Ms. Price indicated her belief that, as part of the legislative compromise extending the fee's duration, no increases would be forthcoming until completion and review of the Fund's legislative audit. Secretary Huffman responded that the preliminary audit findings in no way indicate any misallocation within the Fund or contravene the agency's determination that fee increases are necessary. Ms. Lemmon was recognized, and she commented that the proposed increase was unfair to automobile and truck dealers, as well as other small generators. Ms. Lemmon suggested that a study be done to identify the industries causing DEP to incur program costs, with fee assessments to be made proportionately.

Ms. Watson presented 33 CSR 22 and 47 CSR 56, governing the assessment of civil administrative penalties for, respectively, hazardous and solid waste violations and violations relating to groundwater. Ms. Watson explained that the Rules were being modified for the first time since their initial promulgation, with the purpose of clarifying their application by listing additional factors to be considered in calculating penalties, providing ratings examples, and expanding facility categories.

Ms. Watson then presented 47 CSR 31, addressing the State Water Pollution Control Revolving Fund. Ms. Watson explained that the proposed changes include the creation of a state review process for sewer projects in lieu of a wholesale adoption of the federal requirements. Mr. Roberts observed that many of the eligibility criteria would be deleted, but Ms. Emery assured the Council that inasmuch as the criteria were not being uniformly met, the deletion would have no practical effect on the Fund's administration. Ms. Watson advised Mr. Roberts that if he continued to have concerns upon further review, he should submit written suggestions for changes during the formal comment period.

Mr. Franks presented 47 CSR 32, governing the certification of laboratories conducting analyses of waste and wastewater. Mr. Franks explained that the proposed changes are designed to modernize outdated procedures and protocols that have remained constant since 1995, and to increase program funding through increased certification fees and a new application fee. Mr. Raney asked whether the new fees would render the program self-sustaining, and Mr. Arnold replied that it would for the time-being. In response to further inquiry, Mr. Arnold stated that DEP conducts annual, on-site audits of commercial and industrial labs, with municipal labs typically audited every two years, depending on the experience of the support personnel.

Ms. Watson presented 47 CSR 34, the Dam Safety Rule. Ms. Watson explained that the Rule is being extensively augmented to govern disbursement and use of a new Revolving Fund to finance repair and rehabilitation of deficient dams. Secretary Huffman commented that it appeared imminent that the Legislature would approve a transfer of \$350,000 from excess general revenue as seed money for the Fund.

Lastly, Ms. Watson presented 47 CSR 2, the Water Quality Standards Rule. Ms. Watson explained that the proposed revisions are designed to clarify the definition of Category A use, while providing specific standards to be applied in the permitting process to determine in a more streamlined fashion whether the use is unsuitable in cases of insufficient flow and hydrologic modification. Mr. Raney commented that the Category A determination process has always been a significant problem for the coal industry. Ms. Price also agreed for her members. Mr. Garvin noted that the environmental community had expressed some initial concern regarding the proposed streamlining mechanisms, but that there was some general support for taking the matter out of the legislative arena. Mr. Huffman affirmed that the revisions are designed solely for the benefit of the regulated public and that the revisions must include the clarification that Category A applies statewide.

Ms. Watson reported that the rules will proceed to be filed with the Secretary of State, some perhaps as early as the week following the Council meeting, and that some will have an extended 45-day comment period.

Mr. Franks requested closing comments from Council members and from the public. Following the cessation of discussion, Mr. Franks reminded the Council that the next meeting is scheduled for 1:30 p.m. on September 9, 2008.

Secretary Huffman declared the meeting adjourned at 3:25 p.m.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 45CSR26 - NO<sub>x</sub> 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: Division of Air Quality

Address: 601 57<sup>th</sup> Street SE

Charleston, WV 25304

Phone Number: 926-0499 ext. 1237

Email: tmowrer@wvdep.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR26, as the NO<sub>x</sub> Budget Trading Program will be subsumed by the Clean Air Interstate Rule under 45CSR40 on May 1, 2009. The proposed repeal of this rule should cause no additional impact on costs and revenues of state government.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

**FISCAL YEAR**

| Effect of Proposal                 | 2009<br>Increase/Decrease<br>(use "-") | 2010<br>Increase/Decrease<br>(use "-") | Fiscal Year<br>(Upon Full Implementation) |
|------------------------------------|--|--|---|
| <b>1. Estimated Total Cost</b>     | \$ 0                                   | 0                                      | 0   |
| Personal Services                  | 0                                      | 0                                      | 0   |
| Current Expenses                   | 0                                      | 0                                      | 0   |
| Repairs & Alterations              | 0                                      | 0                                      | 0   |
| Assets                             | 0                                      | 0                                      | 0   |
| Equipment                          | 0                                      | 0                                      | 0   |
| Other                              | 0                                      | 0                                      | 0   |
| <b>2. Estimated Total Revenues</b> | 0                                      | 0                                      | 0   |

Rule Title: 45CSR26 - NO<sub>x</sub> Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

The proposed repeal of this rule will have no effect on the costs to the Division of Air Quality. Refer to above explanation.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date:

7/11/08

Signature of Agency Head



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**TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY**

SECRETARY OF STATE  
DEPARTMENT OF STATE  
STATE OF WEST VIRGINIA

**SERIES 26  
NO<sub>x</sub> 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 the NO<sub>x</sub> Budget Trading Program for state implementation plans as a means of control and reduction of nitrogen oxides (NO<sub>x</sub>), an ozone precursor. The Secretary of the Department of Environmental Protection authorizes the Administrator of the U.S. Environmental Protection Agency to assist the Secretary in implementing the NO<sub>x</sub> Budget Trading Program by carrying out the functions set forth for the Administrator in the requirements of sections 4 through 76 and 40 CFR Part 51. This rule follows the intent of 40 CFR Part 96 for electric generating units. NO<sub>x</sub> Budget Trading Program requirements for non-electric generating units are set forth in 45CSR1.

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

1.3. ~~Numbering and Text Breakdown.~~ -- This rule generally meets the numbering, indentation and text breakdown requirements set forth in 153CSR6. However, its numbering structure intentionally follows the numbering structure of federal counterpart rule 40 CFR Part 96, resulting in several minor areas of nonconformity with 153CSR6.

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

1.5. ~~Filing Date.~~ -- April 21, 2003.

1.6. ~~Effective Date.~~ -- June 1, 2003.

**§45-26-2. Definitions:**

2.1. "Account certificate of representation" means the completed and signed submission required by sections 10 through 14 for certifying the designation of a NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget source or a group of identified NO<sub>x</sub> Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO<sub>x</sub> Budget units at such source or sources with regard to matters under the NO<sub>x</sub> Budget Trading Program.

2.2. "Account number" means the identification number given by the Administrator to each NO<sub>x</sub> Allowance Tracking System account.

2.3. "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.

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

2.5. "Allocate" or "allocation" means the determination by the Secretary or the Administrator of the number of NO<sub>x</sub> allowances to be initially credited to a NO<sub>x</sub> Budget unit or an allocation set-aside.

2.6. "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.

~~2.7. "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.~~

~~2.8. "CAA" means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).~~

~~2.9. "Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators and steam turbines configured to improve overall efficiency of electricity generation or steam production.~~

~~2.10. "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.~~

~~2.11. "Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in subdivision 4.2.a or section 5, for a unit that is a NO<sub>x</sub> 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 subdivision 4.2.a or section 5, for a unit that is not a NO<sub>x</sub> Budget unit under subsection 4.1 on the date the unit commences commercial operation, the date the unit becomes a NO<sub>x</sub> Budget unit under subsection 4.1 shall be the unit's date of commencement of commercial operation.~~

~~2.12. "Commence operation" means to have~~

begun any mechanical, chemical or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in subdivision 4.2.a or section 5, for a unit that is a NO<sub>x</sub> 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 subdivision 4.2.a or section 5, for a unit that is not a NO<sub>x</sub> Budget unit under subsection 4.1 on the date of commencement of operation, the date the unit becomes a NO<sub>x</sub> Budget unit under subsection 4.1 shall be the unit's date of commencement of operation.

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

~~2.14. "Compliance account" means a NO<sub>x</sub> Allowance Tracking System account, established by the Administrator for a NO<sub>x</sub> Budget unit under sections 50 through 57, in which the NO<sub>x</sub> allowance allocations for the unit are initially recorded and in which are held NO<sub>x</sub> allowances available for use by the unit for an ozone season for the purpose of meeting the unit's NO<sub>x</sub> budget emissions limitation.~~

~~2.15. "Compliance certification" means a submission to the Secretary or the Administrator, as appropriate, that is required under sections 30 and 31 to report a NO<sub>x</sub> Budget source's or a NO<sub>x</sub> Budget unit's compliance or noncompliance with sections 30 and 31 and that is signed by the NO<sub>x</sub> authorized account representative in accordance with sections 10 through 14.~~

~~2.16. "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 pounds 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:

- ~~2.16.a. Flow monitor;~~
- ~~2.16.b. NO<sub>x</sub> pollutant concentration monitors;~~
- ~~2.16.c. Diluent gas monitor (oxygen or carbon dioxide);~~
- ~~2.16.d. A continuous moisture monitor; and~~
- ~~2.16.e. An automated data acquisition and handling system.~~

~~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 Secretary or Administrator by the NO<sub>x</sub> 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<sub>x</sub> Budget unit during an ozone season that exceeds the NO<sub>x</sub> 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 combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted~~

~~comprises more than 50 percent of the annual heat input on a Btu basis during 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 combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1996; or~~

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

~~2.22.c.1. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or~~

~~2.22.c.2. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.~~

~~2.23. "General account" means a NO<sub>x</sub> 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, with regard to a specified period to time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the NO<sub>x</sub> authorized account representative and as determined by the Administrator in accordance with sections 70 through 76. Heat input 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  $\text{CO}_2$ ) or the minimum oxygen concentration (in percent  $\text{O}_2$ ):

— 2.30. “Maximum potential  $\text{NO}_x$  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  $\text{NO}_x$  under section 2 of Appendix A of 40 CFR Part 75 and either the maximum oxygen concentration (in percent  $\text{O}_2$ ) or the minimum carbon dioxide concentration (in percent  $\text{CO}_2$ ), 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  $\text{NO}_x$  emissions limitation” means the lowest  $\text{NO}_x$  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  $\text{MW}_e$ ) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards:

— 2.35. “Non-title V permit” means a federally enforceable permit administered by the Secretary 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<sub>x</sub> allowance” means a limited authorization under the NO<sub>x</sub> 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<sub>x</sub> Budget Trading Program, the NO<sub>x</sub> budget permit application, the NO<sub>x</sub> 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 41, 42 or 43, “NO<sub>x</sub> 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 by the Secretary or Administrator in accordance with a the NO<sub>x</sub> Budget Trading Program for state implementation plans established, and approved and administered by the Administrator pursuant to 40 CFR §51.121.~~

~~—2.37. “NO<sub>x</sub> allowance deduction” or “deduct NO<sub>x</sub> allowances” means the permanent withdrawal of NO<sub>x</sub> allowances by the Administrator from a NO<sub>x</sub> Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO<sub>x</sub> emissions from a NO<sub>x</sub> Budget unit for an ozone season, determined in accordance with sections 70 through 76 and sections 50 through 57 or for any other NO<sub>x</sub> allowance withdrawal requirement under this rule.~~

~~—2.38. “NO<sub>x</sub> allowances held” or “hold NO<sub>x</sub> allowances” means the NO<sub>x</sub> 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<sub>x</sub> Allowance Tracking System account.~~

~~—2.39. “NO<sub>x</sub> Allowance Tracking System” means the system by which the Administrator records allocations, deductions and transfers of NO<sub>x</sub> allowances under the NO<sub>x</sub> Budget Trading Program.~~

~~—2.40. “NO<sub>x</sub> Allowance Tracking System~~

~~account” means an account in the NO<sub>x</sub> Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring or deducting of NO<sub>x</sub> allowances.~~

~~—2.41. “NO<sub>x</sub> 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<sub>x</sub> allowances must be submitted for recordation in a NO<sub>x</sub> 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<sub>x</sub> budget emissions limitation for the ozone season immediately preceding such deadline.~~

~~—2.42. “NO<sub>x</sub> authorized account representative” means, for a NO<sub>x</sub> budget source or NO<sub>x</sub> Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances held in the general account.~~

~~—2.43. “NO<sub>x</sub> budget emissions limitation” means, for a NO<sub>x</sub> Budget unit, the tonnage equivalent of the NO<sub>x</sub> 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<sub>x</sub> allowances to account for actual heat input under subdivision 42.5.a for the ozone season or to account for excess emissions for a prior ozone season under subsection 54.4.~~

~~—2.44. “NO<sub>x</sub> budget permit” means the legally binding and federally enforceable written document or portion of such document, issued by the Secretary, including any permit revisions, specifying the NO<sub>x</sub> Budget Trading Program requirements applicable to a NO<sub>x</sub> budget source, to each NO<sub>x</sub> Budget unit at the NO<sub>x</sub> budget source and to the owners and operators and the~~

~~NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget source and each NO<sub>x</sub> Budget unit.~~

~~— 2.45. “NO<sub>x</sub> budget source” means a source that includes one or more NO<sub>x</sub> Budget units.~~

~~— 2.46. “NO<sub>x</sub> 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<sub>x</sub> Budget unit” means a unit that is subject to the NO<sub>x</sub> Budget emissions limitation under subsection 4.1.~~

~~— 2.48. “Operator” means any person who operates, controls or supervises a NO<sub>x</sub> Budget unit or a NO<sub>x</sub> 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<sub>x</sub> Allowance Tracking System account, established by the Administrator under sections 50 through 57 for each NO<sub>x</sub> budget source where there are two or more NO<sub>x</sub> 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<sub>x</sub> Budget unit; or~~

~~— 2.50.b. Any holder of a leasehold interest in a NO<sub>x</sub> Budget unit; or~~

~~— 2.50.c. Any purchaser of power from a NO<sub>x</sub> 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<sub>x</sub> Budget unit; or~~

~~— 2.50.d. With respect to any general~~

~~account, any person who has an ownership interest with respect to the NO<sub>x</sub> allowances held in the general account and who is subject to the binding agreement for the NO<sub>x</sub> authorized account representative to represent that person’s ownership interest with respect to the NO<sub>x</sub> allowances.~~

~~— 2.51. “Ozone season” means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive; provided that in 2004 “ozone season” means the period beginning May 31 and ending September 30 of that year, inclusive.~~

~~— 2.52. “Percent monitor data availability” means, for purposes of subdivision 43.1.a and subsection 84.2, total unit operating hours for which quality-assured data were recorded under sections 70 through 76 in an ozone season, divided by the total number of 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 Secretary 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 Secretary or the Administrator in the regular course of business.~~

~~— 2.56. “Recordation, record or recorded” means, with regard to NO<sub>x</sub> allowances, the movement of NO<sub>x</sub> allowances by the~~

~~Administrator from one NO<sub>x</sub> 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. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.~~

~~2.59. "Serial number" means, when referring to NO<sub>x</sub> allowances, the unique identification number assigned to each NO<sub>x</sub> allowance by the Administrator under subsection 53.3.~~

~~2.60. "Shutdown" means: the period of time a unit is cooled from its normal operating temperature to cold or ambient temperature.~~

~~2.61. "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."~~

~~2.62. "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.~~

~~2.63. "State" means one of the 48 contiguous states or a portion thereof or the District of Columbia that is specified in 40 CFR §51.121 and in which are located units that are subject to the NO<sub>x</sub> Budget Trading Program. The term "state" shall have its conventional meaning where such meaning is clear from the context.~~

~~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 Secretary 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<sub>x</sub> 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<sub>e</sub> -- megawatt electrical~~
- ~~— ton -- 2000 pounds~~
- ~~— TPH -- tons per hour~~
- ~~— CO<sub>2</sub> -- carbon dioxide~~
- ~~— NO<sub>x</sub> -- nitrogen oxides~~
- ~~— O<sub>2</sub> -- oxygen.~~

~~§45-26-4. NO<sub>x</sub> Budget Trading Program Applicability:~~

~~— 4.1. The following units in West Virginia shall be designated NO<sub>x</sub> Budget units, and any source that includes one or more such units shall be a NO<sub>x</sub> 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<sub>e</sub> 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<sub>e</sub> 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<sub>e</sub> 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 that restricts the unit to combusting only natural gas or fuel oil (as defined in 40 CFR §72.2) during an ozone season and which includes a NO<sub>x</sub> emission limitation restricting NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> emission limitation under this subdivision shall restrict NO<sub>x</sub> 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<sub>x</sub> mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default NO<sub>x</sub> 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<sub>x</sub> emission limitation and the special provisions in the permit under subdivision 4.2.a become final; or~~

~~— 4.2.b.2. If the NO<sub>x</sub> 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<sub>x</sub> emission limitation and the special provisions apply to the unit as of such first date of operation.~~

If such  $\text{NO}_x$  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  $\text{NO}_x$  emission limitation and the special provisions become final:

~~4.2.c. The Secretary 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 fuel use and unit operating hours described in subdivision 4.2.a during the ozone season in each year.~~

~~4.2.d.2. The Secretary will allocate  $\text{NO}_x$  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  $\text{NO}_x$  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 Administrator will record the  $\text{NO}_x$  allowances; and~~

~~4.2.d.2.B. After the Administrator records a  $\text{NO}_x$  allowance allocation under subsections 41.1, 41.2, 41.3, 42.2 and subdivision 42.1.a, the Administrator will deduct, from the general account under subparagraph 4.2.d.2.A,  $\text{NO}_x$  allowances that are allocated for the same or a prior ozone season as the  $\text{NO}_x$  allowances allocated to the unit under subsections 41.1, 41.2, 41.3, 42.2 and subdivision 42.1.a and that equal the  $\text{NO}_x$  emission limitation (in tons of  $\text{NO}_x$ ) on which the unit's exemption under subdivision 4.2.a is based. The  $\text{NO}_x$  authorized account representative shall ensure that such general account contains the  $\text{NO}_x$  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 Secretary 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 fuel use and 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 Secretary or the Administrator. The owners and operators bear the burden of proof that the unit met the restriction on fuel use and unit operating hours.~~

~~4.2.d.5. The owners and operators, and to the extent applicable, the  $\text{NO}_x$  authorized account representative of a unit exempt under subdivision 4.2.a shall comply with the requirements of the  $\text{NO}_x$  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 fuel use or unit operating hours described in subdivision 4.2.a is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any ozone season starting in 2004; or~~

~~4.2.d.6.B. The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on fuel use or unit operating hours described in subdivision 4.2.a during any ozone season starting in 2004.~~

~~4.2.d.7. A unit that loses its exemption~~

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

**§45-26-5. Retired Unit Exemption:**

~~—5.1. This section applies to any NO<sub>x</sub> Budget unit that is permanently retired.~~

~~—5.2.a. Any NO<sub>x</sub> Budget unit that is permanently retired shall be exempt from the NO<sub>x</sub> 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 subdivision 5.2.a shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO<sub>x</sub> authorized account representative (authorized in accordance with sections 10 through 14) shall submit a statement to the Secretary (and a copy of the statement to the Administrator) which states, in a format prescribed by the Secretary, 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 Secretary 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 Secretary will allocate NO<sub>x</sub>~~

~~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<sub>x</sub> allowances, the owners and operators of the unit shall specify a general account, in which the Administrator will record such NO<sub>x</sub> 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 Secretary 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<sub>x</sub> authorized account representative of a unit exempt under this section shall comply with the requirements of the NO<sub>x</sub> Budget Trading Program concerning all periods for which the exemption is not in effect, even if 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<sub>x</sub> authorized account representative of the source submits a complete NO<sub>x</sub> budget permit application under section 22 for the unit not less than 18 months (or such lesser time provided by the Secretary) before the later of May 31, 2004 or the date on which the unit is to first resume operation; and~~

~~—5.3.e.2. A unit exempt under this section and located at a source that is required or but for this exemption would be required, to have a non-title V permit shall not resume operation unless the NO<sub>x</sub> authorized account representative of the source submits a complete NO<sub>x</sub> budget permit application under section 22 for the unit not less than 18 months (or such lesser time provided by the Secretary) before the later of May~~

31, 2004 or the date on which the unit is to first resume operation;

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

~~5.3.f.1. The date on which the NO<sub>x</sub> authorized account representative submits a NO<sub>x</sub> 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<sub>x</sub> authorized account representative is required under paragraphs 5.3.e.1 and 5.3.e.2 to submit a NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Budget Trading Program Standard Requirements:**

~~6.1. Permit Requirements:~~

~~6.1.a. The NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget source required to have a federally enforceable permit and each NO<sub>x</sub> Budget unit required to have a federally enforceable permit at the source shall:~~

~~6.1.a.1. Submit to the Secretary a complete NO<sub>x</sub> 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 Secretary determines is necessary in order to review a NO<sub>x</sub> budget permit application and issue or deny a NO<sub>x</sub> budget permit.~~

~~6.1.b. The owners and operators of each NO<sub>x</sub> budget source required to have a federally enforceable permit and each NO<sub>x</sub> Budget unit required to have a federally enforceable permit at the source shall have a NO<sub>x</sub> budget permit issued by the Secretary and operate the unit in compliance with such NO<sub>x</sub> budget permit.~~

~~6.2. Monitoring requirements:~~

~~6.2.a. The owners and operators, and to the extent applicable, the NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget source and each NO<sub>x</sub> 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<sub>x</sub> budget emissions limitation under subsection 6.3.~~

~~6.3. Nitrogen oxides requirements:~~

~~6.3.a. The owners and operators of each NO<sub>x</sub> budget source and each NO<sub>x</sub> Budget unit at the source shall hold NO<sub>x</sub> allowances available for compliance deductions under section 54, as of the NO<sub>x</sub> allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO<sub>x</sub> emissions for the 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 subdivision 42.5.a for the ozone season or to account for excess emission for a prior ozone season under subsection 54.4.~~

~~6.3.b. Each ton of nitrogen oxides emitted in excess of the NO<sub>x</sub> 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<sub>x</sub> Budget unit shall be subject to the requirements under subdivision 6.3.a starting on the later of May 31, 2004 or the date on which the unit commences operation.~~

~~6.3.d. NO<sub>x</sub> allowances shall be held in, deducted from or transferred among NO<sub>x</sub> Allowance Tracking System accounts in accordance with sections 40 through 42, sections 50 through 57 and sections 60 through 62.~~

~~6.3.c. A NO<sub>x</sub> 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<sub>x</sub> allowance was allocated.~~

~~6.3.f. A NO<sub>x</sub> allowance allocated by the Secretary or the Administrator under the NO<sub>x</sub> Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO<sub>x</sub> Budget Trading Program. No provision of the NO<sub>x</sub> Budget Trading Program, the NO<sub>x</sub> budget permit application, the NO<sub>x</sub> 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 Secretary to terminate or limit such authorization.~~

~~6.3.g. A NO<sub>x</sub> allowance allocated by the Secretary or the Administrator under the NO<sub>x</sub> 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<sub>x</sub> allowance to or from a NO<sub>x</sub> 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<sub>x</sub> budget permit of the NO<sub>x</sub> 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<sub>x</sub> Budget unit that has excess emissions in any ozone season shall:~~

~~6.4.a.1. Surrender the NO<sub>x</sub> 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<sub>x</sub> budget source and each NO<sub>x</sub> 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 Secretary or the Administrator.~~

~~6.5.a.1. The account certificate of representation for the NO<sub>x</sub> authorized account representative for the source and each NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Budget Trading Program.~~

~~6.5.a.4. Copies of all documents used to complete a NO<sub>x</sub> budget permit application and any other submission under the NO<sub>x</sub> Budget Trading Program or to demonstrate compliance with the requirements of the NO<sub>x</sub> Budget Trading Program.~~

~~6.5.b. The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget source and each NO<sub>x</sub> Budget unit at the source shall submit the reports and compliance certifications required under the NO<sub>x</sub> Budget Trading Program, including those under 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<sub>x</sub> Budget Trading Program, a NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Budget Trading Program that occurs prior to the date that the revision takes effect.~~

~~6.6.d. Each NO<sub>x</sub> budget source and each NO<sub>x</sub> Budget unit shall meet the requirements of the NO<sub>x</sub> Budget Trading Program.~~

~~6.6.e. Any provision of the NO<sub>x</sub> Budget Trading Program that applies to a NO<sub>x</sub> budget source (including a provision applicable to the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget source) shall also apply to the owners and operators of such source and of the NO<sub>x</sub> Budget units at the source.~~

~~6.6.f. Any provision of the NO<sub>x</sub> Budget Trading Program that applies to a NO<sub>x</sub> Budget unit (including a provision applicable to the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> 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<sub>x</sub> authorized account representative of one NO<sub>x</sub> Budget unit shall not~~

be liable for any violation by any other NO<sub>x</sub> Budget unit of which they are not owners or operators or the NO<sub>x</sub> authorized account representative and that is located at a source of which they are not owners or operators or the NO<sub>x</sub> authorized account representative.

~~6.7. Effect on other authorities. -- No provision of the NO<sub>x</sub> Budget Trading Program, a NO<sub>x</sub> budget permit application, a NO<sub>x</sub> 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<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget source or NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Authorized Account Representative:~~

~~10.1. Except as provided under section 11, each NO<sub>x</sub> budget source, including all NO<sub>x</sub> Budget units at the source, shall have one and only one NO<sub>x</sub> authorized account representative, with regard to all matters under the NO<sub>x</sub> Budget Trading Program concerning the source or any~~

~~NO<sub>x</sub> Budget unit at the source:~~

~~10.2. The NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget source shall be selected by an agreement binding on the owners and operators of the source and all NO<sub>x</sub> Budget units at the source:~~

~~10.3. Upon receipt by the Administrator of a complete account certificate of representation under section 13, the NO<sub>x</sub> 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<sub>x</sub> budget source represented and each NO<sub>x</sub> Budget unit at the source in all matters pertaining to the NO<sub>x</sub> Budget Trading Program; not withstanding any agreement between the NO<sub>x</sub> authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO<sub>x</sub> authorized account representative by the Secretary, the Administrator or a court regarding the source or unit.~~

~~10.4. No NO<sub>x</sub> budget permit shall be issued and no NO<sub>x</sub> Allowance Tracking System account shall be established for a NO<sub>x</sub> Budget unit at a source until the Administrator has received a complete account certificate of representation under section 13 for a NO<sub>x</sub> authorized account representative of the source and the NO<sub>x</sub> Budget units at the source:~~

~~10.5.a. Each submission under the NO<sub>x</sub> Budget Trading Program shall be submitted, signed and certified by the NO<sub>x</sub> authorized account representative for each NO<sub>x</sub> budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO<sub>x</sub> authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO<sub>x</sub> budget sources or NO<sub>x</sub> 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 Secretary and the Administrator will accept or act on a submission made on behalf of owner or operators of a NO<sub>x</sub> budget source or a NO<sub>x</sub> Budget unit only if the submission has been made, signed and certified in accordance with subdivision 10.5.a.~~

~~§45-26-11. Alternate NO<sub>x</sub> Authorized Account Representative:~~

~~11.1. An account certificate of representation may designate one and only one alternate NO<sub>x</sub> authorized account representative who may act on behalf of the NO<sub>x</sub> authorized account representative. The agreement by which the alternate NO<sub>x</sub> authorized account representative is selected shall include a procedure for authorizing the alternate NO<sub>x</sub> authorized account representative to act in lieu of the NO<sub>x</sub> authorized account representative:~~

~~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<sub>x</sub> authorized account representative shall be deemed to be a representation, action, inaction or submission by the NO<sub>x</sub> authorized account representative:~~

~~11.3. Except in this section and subsection 10.1, sections 12, 13 and 51, whenever the term "NO<sub>x</sub> authorized account representative" is used in this rule, the term shall be construed to include the alternate NO<sub>x</sub> authorized account representative:~~

~~§45-26-12. Changing the NO<sub>x</sub> Authorized Account Representative and the Alternate NO<sub>x</sub> Authorized Account Representative; Changes in Owners and Operators:~~

~~12.1. Changing the NO<sub>x</sub>-authorized account representative. -- The NO<sub>x</sub>-authorized account representative may be changed at any time upon receipt by the 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<sub>x</sub>-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<sub>x</sub>-authorized account representative and the owners and operators of the NO<sub>x</sub>-budget source and the NO<sub>x</sub>-Budget units at the source.~~

~~12.2. Changing the alternate NO<sub>x</sub>-authorized account representative. -- The alternate NO<sub>x</sub>-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<sub>x</sub>-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<sub>x</sub>-authorized account representative and the owners and operators of the NO<sub>x</sub>-budget source and the NO<sub>x</sub>-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<sub>x</sub>-budget source or a NO<sub>x</sub>-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<sub>x</sub>-authorized account representative and any alternate NO<sub>x</sub>-authorized account representative of the source or unit and the decisions orders, actions and inactions of the Secretary 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<sub>x</sub>-budget source or a NO<sub>x</sub>-Budget unit, including the addition of a new owner or operator, the NO<sub>x</sub>-authorized account representative or alternate NO<sub>x</sub>-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<sub>x</sub>-authorized account representative or an alternate NO<sub>x</sub>-authorized account representative shall include the following elements in a format prescribed by the Administrator:~~

~~13.1.a. Identification of the NO<sub>x</sub>-budget source and each NO<sub>x</sub>-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<sub>x</sub>-authorized account representative and any alternate NO<sub>x</sub>-authorized account representative;~~

~~13.1.c. A list of the owners and operators of the NO<sub>x</sub>-budget source and of each NO<sub>x</sub>-Budget unit at the source;~~

~~13.1.d. The following certification statement by the NO<sub>x</sub>-authorized account representative and any alternate NO<sub>x</sub>-authorized account representative: "I certify that I was selected as the NO<sub>x</sub>-authorized account representative or alternate NO<sub>x</sub>-authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO<sub>x</sub>-budget source and each NO<sub>x</sub>-Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO<sub>x</sub>-Budget Trading Program on behalf of the owners and operators of the NO<sub>x</sub>-budget source and of each NO<sub>x</sub>-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 Secretary, the Administrator or a court regarding the source or unit<sup>22</sup>; and

~~13.1.c. The signature of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative and the dates signed:~~

~~13.2. Unless otherwise required by the Secretary or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Secretary or the Administrator. Neither the Secretary 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<sub>x</sub> Authorized Account Representative:~~

~~14.1. Once a complete account certificate of representation under section 13 has been submitted and received, the Secretary 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 Secretary or the Administrator concerning the authorization or any representation, action, inaction or submission of the NO<sub>x</sub> authorized account representative shall affect any representation, action, inaction or submission of the NO<sub>x</sub> authorized account representative or the finality of any decision or order by the Secretary or the Administrator under the NO<sub>x</sub> Budget Trading Program.~~

~~14.3. Neither the Secretary nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction or submission of any NO<sub>x</sub> authorized account representative, including private legal disputes concerning the proceeds of NO<sub>x</sub> allowance transfers.~~

~~§45-26-20. General NO<sub>x</sub> Budget Trading Program Permit Requirements:~~

~~20.1. For each NO<sub>x</sub> budget source required to have a federally enforceable permit, such permit shall include a NO<sub>x</sub> budget permit administered by the Secretary:~~

~~20.1.a. For NO<sub>x</sub> budget sources required to have a title V operating permit, the NO<sub>x</sub> 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 Secretary and Administrator:~~

~~20.1.b. For NO<sub>x</sub> budget sources required to have a non-title V permit, the NO<sub>x</sub> 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 Secretary and Administrator:~~

~~20.2. Each NO<sub>x</sub> budget permit (including a draft or proposed NO<sub>x</sub> budget permit, if applicable) shall include all applicable NO<sub>x</sub> Budget Trading Program requirements and shall be a complete and segregable portion of the permit under subsection 20.1.~~

~~§45-26-21. NO<sub>x</sub> Budget Permit Applications:~~

~~21.1. Duty to apply. -- The NO<sub>x</sub> authorized account representative of any NO<sub>x</sub> budget source required to have a federally enforceable permit shall submit to the Secretary a complete NO<sub>x</sub> budget permit application under section 22 by the applicable deadline in subsection 21.2.~~

~~21.2. Deadlines for NO<sub>x</sub> budget permit applications:~~

~~21.2.a. For NO<sub>x</sub> budget sources required to have a title V operating permit:~~

~~21.2.a.1. For any source, with one or more NO<sub>x</sub> Budget units under subsection 4.1 that commenced operation before January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under section 22 covering such NO<sub>x</sub> Budget units to the Secretary at least 18 months before May 31, 2004, and~~

~~21.2.a.2. For any source, with any NO<sub>x</sub> Budget unit under subsection 4.1 that commences operation on or after January 1, 2001, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under section 22 covering such NO<sub>x</sub> Budget unit to the Secretary at least 6 months before the later of May 31, 2004 or the date on which the NO<sub>x</sub> Budget unit commences operation.~~

~~21.2.b. For NO<sub>x</sub> budget sources required to have a non-title V permit:~~

~~21.2.b.1. For any source, with one or more NO<sub>x</sub> Budget units under subsection 4.1 that commenced operation before January 1, 2001, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under section 22 covering such NO<sub>x</sub> Budget units to the Secretary at least 6 months before May 31, 2004, and~~

~~21.2.b.2. For any source, with any NO<sub>x</sub> Budget unit under subsection 4.1 that commences operation on or after January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under section 22 covering such NO<sub>x</sub> Budget unit to the Secretary at least 6 months before the later of May 31, 2004 or the date on which the NO<sub>x</sub> Budget unit commences operation.~~

~~21.3. Duty to reapply:~~

~~21.3.a. For a NO<sub>x</sub> budget source required~~

~~to have a title V operating permit, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under section 22 for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> Budget units at the source in accordance with the operating permit renewal requirements set forth in 45CSR30.~~

~~21.3.b. For a NO<sub>x</sub> budget source required to have a non-title V permit, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under section 22 for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> Budget units at the source in accordance with 45CSR13.~~

#### ~~§45-26-22. Information Requirements for NO<sub>x</sub> Budget Permit Applications.~~

~~22.1. A complete NO<sub>x</sub> budget permit application shall include the following elements concerning the NO<sub>x</sub> budget source for which the application is submitted, in a format prescribed by the Secretary:~~

~~22.1.a. Identification of the NO<sub>x</sub> 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<sub>x</sub> Budget unit at the NO<sub>x</sub> budget source and whether it is a NO<sub>x</sub> Budget unit under subsection 4.1; and~~

~~22.1.c. The standard requirements under section 6:~~

#### ~~§45-26-23. NO<sub>x</sub> Budget Permit Contents.~~

~~23.1. Each NO<sub>x</sub> budget permit (including any draft or proposed NO<sub>x</sub> budget permit) will contain, in a format prescribed by the Secretary, all elements required for a complete NO<sub>x</sub> budget permit application under section 22.~~

~~23.2. Each NO<sub>x</sub> 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<sub>x</sub> allowance to or from the compliance accounts of the NO<sub>x</sub> Budget units covered by the permit or the overdraft account of the NO<sub>x</sub> budget source covered by the permit.

**§45-26-24. NO<sub>x</sub> Budget Permit Revisions:**

— 24.1. For a NO<sub>x</sub> budget source with a title V operating permit, except as provided in subsection 23.2, the Secretary will revise the NO<sub>x</sub> budget permit, as necessary, in accordance with the operating permit revision requirements set forth in 45CSR30.

— 24.2. For a NO<sub>x</sub> budget source with a non-title V permit, except as provided in subsection 23.2, the Secretary will reissue the NO<sub>x</sub> 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<sub>x</sub> Budget units at a source are subject to the NO<sub>x</sub> budget emissions limitation, the NO<sub>x</sub> authorized account representative of the source shall submit to the Secretary 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<sub>x</sub> 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<sub>x</sub> budget emissions limitation for the ozone season covered by the report:

— 30.2.a. Identification of each NO<sub>x</sub> Budget unit;

— 30.2.b. At the NO<sub>x</sub> authorized account representative's option, the serial numbers of the NO<sub>x</sub> 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<sub>x</sub> authorized account

representative's option, for units sharing a common stack and having NO<sub>x</sub> 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<sub>x</sub> authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO<sub>x</sub> Budget units at the source in compliance with the NO<sub>x</sub> Budget Trading Program, whether each NO<sub>x</sub> 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<sub>x</sub> Budget Trading Program applicable to the unit, including:

— 30.3.a. Whether the unit was operated in compliance with the NO<sub>x</sub> 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<sub>x</sub> emissions to the unit, in accordance with sections 70 through 76;

— 30.3.c. Whether all the NO<sub>x</sub> 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. Secretary's and Administrator's Action on Compliance Certifications.~~

~~31.1. The Secretary or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO<sub>x</sub> Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.~~

~~31.2. The Administrator may deduct NO<sub>x</sub> allowances from or transfer NO<sub>x</sub> 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<sub>x</sub> Trading Budget.~~

~~40.1. In accordance with sections 41 and 42, the Secretary will allocate to the NO<sub>x</sub> Budget units under subsection 4.1 for each ozone season specified in section 41, a total number of allowances equal to the number of NO<sub>x</sub> tons apportioned to electric generating units in the State of West Virginia as set forth in paragraph (g)(2)(ii) of 40 CFR §51.121, as amended from time to time, less the sum of the NO<sub>x</sub> emission limitations (in tons) for each unit exempt under subdivision 4.2.a that is not allocated any NO<sub>x</sub> allowances under subsection 4.2.2 for the ozone season and whose NO<sub>x</sub> emission limitation (in tons of NO<sub>x</sub>) 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<sub>x</sub> Allowance Allocations.~~

~~41.1. By April 1, 2002, the Secretary will determine by order and submit to the Administrator the state NO<sub>x</sub> allowance allocations, in accordance with subdivision 42.1.a and subsection 42.2, for the ozone seasons in 2004 through 2007.~~

~~41.2. By April 1, 2005, the Secretary will determine by order and submit to the Administrator the NO<sub>x</sub> 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<sub>x</sub> allowance allocations are determined, the Secretary will determine by order and submit to the Administrator the NO<sub>x</sub> 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, 2004 and April 1 of each year thereafter, the Secretary will determine by order and submit to the Administrator the NO<sub>x</sub> allowance allocations from the new source NO<sub>x</sub> allowance allocation set aside, in accordance with subsection 42.4, for the ozone season in the year of the applicable deadline under this subsection. If the Secretary fails to submit to the Administrator the new source NO<sub>x</sub> allowance allocations in accordance with this subsection, the Administrator will allocate, for the applicable ozone season, the same number of NO<sub>x</sub> allowances as were allocated for the preceding ozone season.~~

~~41.5. The Secretary will make available to the public and the Administrator the draft order determining the NO<sub>x</sub> 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 Secretary 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 Secretary 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<sub>x</sub> Allowance Allocations.~~

~~42.1.a. The heat input (in mmBtu) used for calculating state NO<sub>x</sub> allowance allocations for each NO<sub>x</sub> Budget unit under subsection 4.1 will be:~~

~~42.1.a.1. For a state NO<sub>x</sub> 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 1998.~~

~~42.1.a.2. For a NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowance allocation under subsection 41.1, such heat input will be determined using the best available data reported to the Secretary 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<sub>x</sub> 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 Secretary will allocate to all NO<sub>x</sub> 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<sub>x</sub> allowances equal to 95 percent of the portion of the state NO<sub>x</sub> trading budget under subsection 40.1, covering such units. The Secretary will allocate in accordance with the following procedures:~~

~~42.2.a. The Secretary will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> 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<sub>x</sub> allowances as appropriate; or~~

~~42.2.a.2. The unit's most stringent state or federal NO<sub>x</sub> 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<sub>x</sub> allowances as appropriate.~~

~~42.2.b. If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> Budget units under subsection 4.1 for an ozone season under subdivision 42.2.a does not equal 95 percent of~~

the portion of the state  $\text{NO}_x$  trading budget under subsection 40.1, covering such units, the Secretary will adjust the total number of  $\text{NO}_x$  allowances allocated to all such  $\text{NO}_x$  Budget units for the ozone season under subdivision 42.2.a so that the total number of  $\text{NO}_x$  allowances allocated equals 95 percent of the portion of the state  $\text{NO}_x$  trading budget under subsection 40.1, covering such units. This adjustment will be made by multiplying each unit's allocation by 95 percent of the portion of the state  $\text{NO}_x$  trading budget under subsection 40.1, covering such units, dividing by the total number of  $\text{NO}_x$  allowances allocated under subdivision 42.2.a for the ozone season, and rounding to the nearest whole number of  $\text{NO}_x$  allowances as appropriate.

~~42.3. Reserved.~~

~~42.4. New source  $\text{NO}_x$  allocation set aside.~~ For each ozone season under subsection 41.4, the Secretary will allocate  $\text{NO}_x$  allowances from the allocation set aside to  $\text{NO}_x$  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 Secretary will make the allocations under this subsection in accordance with the following procedures:

~~42.4.a.~~ The Secretary will establish one allocation set aside for each ozone season. Each allocation set aside will be allocated  $\text{NO}_x$  allowances equal to 5 percent of the tons of  $\text{NO}_x$  emissions in the state  $\text{NO}_x$  trading budget under subsection 40.1, rounded to the nearest whole number of  $\text{NO}_x$  allowances as appropriate;

~~42.4.b.~~ The  $\text{NO}_x$  authorized account representative of a  $\text{NO}_x$  Budget unit under subsection 42.4 may submit to the Secretary a request, in writing or in a format specified by the Secretary, to be allocated  $\text{NO}_x$  allowances from the allocation set aside for the ozone season. The  $\text{NO}_x$  allowance allocation request must be

received by the Secretary on or after the date on which the Secretary issues a permit to construct the unit and by January 1 before the ozone season for which  $\text{NO}_x$  allowances are requested;

~~42.4.c.~~ In the  $\text{NO}_x$  allowance allocation request under subdivision 42.4.b, the  $\text{NO}_x$  authorized account representative for a  $\text{NO}_x$  Budget unit under subsection 4.1 may request for the ozone season  $\text{NO}_x$  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 (in mmBtu/hr), 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  $\text{NO}_x$  allowances as appropriate; or

~~42.4.c.2.~~ The unit's most stringent state or federal  $\text{NO}_x$  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  $\text{NO}_x$  allowances as appropriate.

~~42.4.d.~~ Reserved.

~~42.4.e.~~ The Secretary will review each  $\text{NO}_x$  allowance allocation request submitted in accordance with subdivision 42.4.b and will allocate  $\text{NO}_x$  allowances pursuant to such request as follows:

~~42.4.e.1.~~ Upon receipt of the  $\text{NO}_x$  allowance allocation request, the Secretary 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 Secretary will determine the following amounts:

~~42.4.e.2.A. The sum of the NO<sub>x</sub> allowances requested (as adjusted under paragraph 42.4.e.1) in all NO<sub>x</sub> 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<sub>x</sub> emission limitations (in tons of NO<sub>x</sub>) on which each unit's exemption under subdivision 4.2.a is based;~~

~~42.4.e.3. If the number of NO<sub>x</sub> 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 Secretary will allocate the amount of the NO<sub>x</sub> allowances requested (as adjusted under paragraph 42.4.e.1) to the NO<sub>x</sub> Budget unit for which the allocation request was submitted; and~~

~~42.4.e.4. If the number of NO<sub>x</sub> 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 Secretary will allocate, to the NO<sub>x</sub> Budget unit for which the allocation request was submitted, the amount of NO<sub>x</sub> allowances requested (as adjusted under paragraph 42.4.e.1) multiplied by the number of NO<sub>x</sub> 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<sub>x</sub> allowances as appropriate.~~

~~42.5.a. For a NO<sub>x</sub> Budget unit that is allocated NO<sub>x</sub> allowances under subsection 42.4 for an ozone season, the Administrator will deduct NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances as appropriate, provided that the number of NO<sub>x</sub> allowances to be deducted shall be zero if the number calculated is less than zero:

~~NO<sub>x</sub> allowances deducted for actual heat input for units under subsection 4.1 = (unit's NO<sub>x</sub> allowances allocated for ozone season) - [(unit's actual ozone season heat input X the lesser of 0.15 lb/mmBtu or the unit's most stringent state or federal NO<sub>x</sub> emission limitation) ÷ 2000 lb/ton];~~

where:

~~"Unit's NO<sub>x</sub> allowances allocated for ozone season" is the number of NO<sub>x</sub> allowances allocated to the unit for the ozone season under subsection 42.4; and~~

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

~~42.5.b. The Administrator will transfer any NO<sub>x</sub> allowances deducted under subdivision 42.5.a to the allocation set-aside for the ozone season for which they were allocated.~~

~~42.6. After making the deductions for compliance under subsections 54.2, 54.5 or 54.6 for an ozone season, the Administrator will determine whether any NO<sub>x</sub> allowances remain in the allocation set-aside for the ozone season. The Secretary will allocate any such NO<sub>x</sub> allowances to the NO<sub>x</sub> Budget units using the following formula and rounding to the nearest whole number of NO<sub>x</sub> allowances as appropriate:~~

~~Unit's share of NO<sub>x</sub> allowances remaining in allocation set-aside = (Total NO<sub>x</sub> allowances remaining in allocation set-aside) X (Unit's NO<sub>x</sub> allowance allocation) ÷ (state NO<sub>x</sub> trading budget excluding allocation set-aside)~~

where:

—“Total NO<sub>x</sub> allowanees remaining in allocation set-aside” is the total number of NO<sub>x</sub> allowances remaining in the allocation set-aside for the ozone season;

—“Unit’s NO<sub>x</sub> allowance allocation” is the number of NO<sub>x</sub> allowances allocated under subsection 42.2 to the unit for the ozone season to which the allocation set-aside applies, and

—“State NO<sub>x</sub> trading budget excluding allocation set-aside” is the state NO<sub>x</sub> trading budget under subsection 40.1 for the ozone season to which the allocation set-aside applies multiplied by 95 percent, rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

—42.7. If the Administrator determines that NO<sub>x</sub> 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<sub>x</sub> Budget unit under subsection 4.1, the Administrator will notify the NO<sub>x</sub> authorized account representative and then will act in accordance with the following procedures:

—42.7.a.1. The Administrator will not record such NO<sub>x</sub> allowances for the ozone season in an account under section 53;

—42.7.a.2. If the Administrator already recorded such NO<sub>x</sub> 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<sub>x</sub> allowances equal in number to and allocated for the same or a prior ozone season as the NO<sub>x</sub> allowances allocated to such recipient for the ozone season. The NO<sub>x</sub> authorized account representative shall ensure the account contains the NO<sub>x</sub> allowances necessary for completion of such deduction. If the account does not contain the necessary NO<sub>x</sub> allowances, the Administrator will deduct the required number of NO<sub>x</sub> allowances, regardless of the ozone season for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in the account or:

—42.7.a.3. If the Administrator already recorded such NO<sub>x</sub> 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<sub>x</sub> allowances were allocated to such recipient:

—42.7.b. The Administrator will transfer the NO<sub>x</sub> 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<sub>x</sub> Budget unit that reduces its NO<sub>x</sub> emission rate in the 2002 or 2003 ozone season, the owners and operators may request early reduction credits in accordance with the following requirements:

—43.1.a. Each NO<sub>x</sub> 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<sub>x</sub> emissions in accordance with sections 70 through 76 starting in the 2001 ozone season and for each ozone season for which such early reduction credits are requested. The unit’s percent monitor data availability shall not be less than 90 percent during the 2001 ozone season and the unit must be in full compliance with any applicable state or federal NO<sub>x</sub> emission control requirements during 2001 through 2003;

—43.1.b. NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> emission rate in the 2001 ozone season; and

~~43.1.d. The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that meets the requirements of subdivisions 43.1.a and 43.1.c may submit to the Secretary a request for early reduction credits for the unit based on NO<sub>x</sub> emission rate reductions made by the unit in the ozone season for 2002 or 2003.~~

~~43.1.d.1. In the early reduction credit request, the NO<sub>x</sub> 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<sub>x</sub> 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 Secretary by February 1, 2004.~~

~~43.2. Reserved.~~

~~43.2.a. Reserved.~~

~~43.2.b. Reserved.~~

~~43.2.c. Reserved.~~

~~43.3. The Secretary will review each early reduction credit request submitted in accordance with subsection 43.1 and will allocate NO<sub>x</sub> allowances to NO<sub>x</sub> Budget units covered by such request as follows:~~

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

~~43.3.b. After February 1, 2004, the Secretary will make available to the public a statement of the total number of early reduction credits requested by NO<sub>x</sub> Budget units;~~

~~43.3.c. If the compliance supplement pool has a number of NO<sub>x</sub> allowances not less than the amount of early reduction credits in all early reduction credit requests under subsection 43.1 for 2002 and 2003 (as adjusted under subdivision 43.3.a) submitted by February 1, 2004, the Secretary will allocate to each NO<sub>x</sub> Budget unit covered by such requests one allowance for each early reduction credit requested (as adjusted under subdivision 43.3.a);~~

~~43.3.d. If the compliance supplement pool has a smaller number of NO<sub>x</sub> allowances than the amount of early reduction credits in all early reduction credit requests under subsection 43.1 for 2002 and 2003 (as adjusted under subdivision 43.3.a) submitted by February 1, 2004, the Secretary will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> Budget unit covered by such requests according to the following formula and rounding to the nearest whole number of NO<sub>x</sub> 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<sub>x</sub> allowances allocated to the unit for early reduction credits;~~

~~"Unit's adjusted early reduction credits" is the amount of early reduction credits requested for the unit for 2002 and 2003 in early reduction credit requests under subsection 43.1, as adjusted under subdivision 43.3.a;~~

~~"Compliance supplement pool" is 16,709 tons of NO<sub>x</sub> allowances;~~

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

~~43.3.e. By April 1, 2004, the Secretary~~

will determine by order the allocations under subdivisions 43.3.c or 43.3.d. The Secretary will make available to the public each determination of NO<sub>x</sub> 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 Secretary will adjust each determination to the extent necessary to ensure that it is in accordance with subdivisions 43.3.a, 43.3.c or 43.3.d;

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

~~43.3.g. NO<sub>x</sub> allowances recorded under subdivision 43.3.f may be deducted for compliance under section 54 for the ozone season in 2004 or 2005. Notwithstanding subsection 55.1, the Administrator will deduct as retired any NO<sub>x</sub> allowance that is recorded under subdivision 43.3.f and that is not deducted for compliance under section 54 for the ozone season in 2004 or 2005.~~

#### ~~§45-26-50. NO<sub>x</sub> 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<sub>x</sub> Budget unit and one overdraft account for each source with one or more NO<sub>x</sub> Budget units. Allocations of NO<sub>x</sub> allowances pursuant to sections 40 through 42 and deductions or transfers of NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative;~~

~~51.2.a.2. At the option of the NO<sub>x</sub> 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<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative to represent their ownership interest with respect to the NO<sub>x</sub> allowances held in the general account;~~

~~51.2.a.4. The following certification statement by the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative: "I certify that I was~~

~~selected as the NO<sub>x</sub> authorized account representative or the NO<sub>x</sub> alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to NO<sub>x</sub> 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<sub>x</sub> 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<sup>2</sup>;~~

~~51.2.a.5. The signature of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative and the dates signed; and~~

~~51.2.a.6. Unless otherwise required by the Secretary or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Secretary or the Administrator. Neither the Secretary 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<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> 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<sub>x</sub> allowances held in the general account in all matters pertaining to the NO<sub>x</sub> Budget Trading Program, notwithstanding any agreement between the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative and such person. Any such person shall be bound by any order or decision~~

~~issued to the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> 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<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative for the persons having an ownership interest with respect to NO<sub>x</sub> allowances held in the general account. Each such submission shall include the following certification statement by the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> 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<sub>x</sub> 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<sup>2</sup>," 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<sub>x</sub> authorized account representative and one and only one alternate NO<sub>x</sub> authorized account representative who may act on behalf of the NO<sub>x</sub> authorized account representative. The agreement by which the alternate NO<sub>x</sub> authorized account representative is selected shall include a procedure for authorizing the alternate NO<sub>x</sub> authorized account representative to act in lieu of the NO<sub>x</sub> authorized account representative.~~

~~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<sub>x</sub> authorized account representative shall be deemed to be a representation, action, inaction or submission by the NO<sub>x</sub> authorized account representative.~~

~~51.2.d.1. The NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> authorized account representative and the persons with an ownership interest with respect to the NO<sub>x</sub> allowances in the general account.~~

~~51.2.d.2. The alternate NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> authorized account representative and the persons with an ownership interest with respect to the NO<sub>x</sub> allowances in the general account.~~

~~51.2.d.3.A. In the event a new person having an ownership interest with respect to NO<sub>x</sub> 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<sub>x</sub> authorized account representative and~~

~~any alternate NO<sub>x</sub> 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<sub>x</sub> allowances in the general account, including the addition of persons, the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative for a general account shall affect any representation, action, inaction or submission of the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative or the finality of any decision or order by the Administrator under the NO<sub>x</sub> 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<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative for a general account, including private legal disputes concerning the proceeds of NO<sub>x</sub> 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<sub>x</sub> Allowance Tracking System Responsibilities of NO<sub>x</sub> Authorized Account Representative:~~

~~52.1. Following the establishment of a NO<sub>x</sub> 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<sub>x</sub> allowances in the account, shall be made only by the NO<sub>x</sub> authorized account representative for the account.~~

~~52.2. Authorized account representative identification. -- The Administrator will assign a unique identifying number to each NO<sub>x</sub> authorized account representative.~~

~~§45-26-53. Recordation of NO<sub>x</sub> Allowance Allocations:~~

~~53.1. The Administrator will record the NO<sub>x</sub> allowances for 2004 for a NO<sub>x</sub> Budget unit allocated under sections 40 through 42 in the unit's compliance account, except for NO<sub>x</sub> 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<sub>x</sub> allowances for 2005 for a NO<sub>x</sub> Budget unit allocated under sections 40 through 42 in the unit's compliance account, except for NO<sub>x</sub> 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, 2003, the Administrator will record the NO<sub>x</sub> allowances for 2006 for a NO<sub>x</sub> Budget unit allocated under sections 40 through 42 in the unit's compliance account, except for NO<sub>x</sub> 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, 2004, the Administrator will record the NO<sub>x</sub> allowances for 2007 for a NO<sub>x</sub> Budget unit allocated under sections 40 through 42 in the unit's compliance account, except for NO<sub>x</sub> 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 2005, after the Administrator has made all deductions from a NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances. -- When allocating NO<sub>x</sub> allowances to a NO<sub>x</sub> Budget unit and recording them in an account, the Administrator will assign each NO<sub>x</sub> allowance a unique identification number that will include digits identifying the year for which the NO<sub>x</sub> allowance is allocated.~~

~~§45-26-54. Compliance:~~

~~54.1. NO<sub>x</sub> allowance transfer deadline. -- The NO<sub>x</sub> allowances are available to be deducted for compliance with a unit's NO<sub>x</sub> budget emissions limitation for an ozone season in a given year only if the NO<sub>x</sub> 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<sub>x</sub> allowance transfer deadline for that ozone season or are transferred into the compliance account or overdraft account by a NO<sub>x</sub> allowance transfer correctly submitted for recordation under section 60 by the NO<sub>x</sub> allowance transfer deadline for that ozone season.~~

~~54.2. Deductions for compliance:~~

~~54.2.a. Following recordation in accordance with section 61 of NO<sub>x</sub> 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<sub>x</sub> allowance transfer deadline for an ozone season, the Administrator will deduct NO<sub>x</sub> allowances available under subsection 54.1 to cover the unit's NO<sub>x</sub> emissions (as determined in accordance with sections 70 through 76) or to account for actual heat input under subdivision 42.5.a for the ozone season:~~

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

~~54.2.a.2. Only if no more NO<sub>x</sub> 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<sub>x</sub> Allowance Tracking System account number and end with the unit having the compliance account with the highest NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances deducted for the ozone season equals~~

~~the number of tons of NO<sub>x</sub> 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<sub>x</sub> allowances required for deduction to account for actual heat input under subdivision 42.5.a for the ozone season; or~~

~~54.2.b.2. Until no more NO<sub>x</sub> allowances available under subsection 54.1 remain in the respective account.~~

~~54.3.a. Identification of NO<sub>x</sub> allowances by serial number. The NO<sub>x</sub> authorized account representative for each compliance account may identify by serial number the NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances that were allocated for the ozone season to the unit under sections 40 through 42;~~

~~54.3.b.2. Those NO<sub>x</sub> 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<sub>x</sub> allowances that were allocated for a prior ozone season to the unit under sections 40 through 42; and~~

~~54.3.b.4. Those NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances, the Administrator will deduct the required number of NO<sub>x</sub> allowances, regardless of the ozone season for which they were allocated; whenever NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> authorized account representative of the units may identify the percentage of NO<sub>x</sub> allowances to be deducted~~

~~from each such unit's compliance account to cover the unit's share of NO<sub>x</sub> 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<sub>x</sub> allowances for each such unit until the number of NO<sub>x</sub> allowances deducted equals the unit's identified percentage (under subdivision 54.5.a) of the number of tons of NO<sub>x</sub> 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 subdivision 42.5.a for the ozone season.~~

~~54.6. Deduction of banked allowances. -- Each year starting in 2005 or 2006 if the Secretary determines the Administrator has approved or promulgated this later date for purposes of implementation under 40 CFR Part 96 or 40 CFR Part 52 in any state with a compliance date of May 31, 2004, after the Administrator has completed the designation of banked NO<sub>x</sub> allowances under subdivision 55.1.b and before May 1 of the year, the Administrator will determine the extent to which banked NO<sub>x</sub> 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 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 budget of each state or portion of a state under the NO<sub>x</sub> Budget Trading Program established, and approved and administered by the Administrator pursuant to 40 CFR §51.121.~~

~~54.6.a. The Administrator will determine the total number of banked NO<sub>x</sub> allowances held~~

in compliance accounts, overdraft accounts, or general accounts;

~~54.6.b. If the total number of banked  $\text{NO}_x$  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 budgets for all states for the ozone season, any banked  $\text{NO}_x$  allowance may be deducted for compliance in accordance with subsections 54.1 through 54.5.~~

~~54.6.c. If the total number of banked  $\text{NO}_x$  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 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 budgets for all states for the ozone season and divided by the total number of banked  $\text{NO}_x$  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  $\text{NO}_x$  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  $\text{NO}_x$  allowances in the account that may be deducted for compliance in accordance with subsections 54.1 through 54.5. Any banked  $\text{NO}_x$  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  $\text{NO}_x$  allowances are used to make a deduction under subsections 54.2 or 54.5, two (rather than one) such  $\text{NO}_x$  allowances shall authorize up to one ton of  $\text{NO}_x$  emissions during the ozone season and must be deducted for each deduction of one  $\text{NO}_x$  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. $\text{NO}_x$ Allowance Banking.~~

~~55.1.  $\text{NO}_x$  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  $\text{NO}_x$  allowance that is held in a compliance account, an overdraft account or a general account will remain in such account unless and until the  $\text{NO}_x$  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"  $\text{NO}_x$  allowance, any  $\text{NO}_x$  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.~~

~~56.1. The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any  $\text{NO}_x$  Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the  $\text{NO}_x$  authorized account representative for the account.~~

#### ~~§45-26-57. Closing of General Accounts.~~

~~57.1. The  $\text{NO}_x$  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  $\text{NO}_x$  Allowance Tracking System and by correctly submitting for recordation under section 60 an allowance transfer of all  $\text{NO}_x$  allowances in the account to one or~~

more other NO<sub>x</sub> 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<sub>x</sub> allowances, the Administrator may notify the NO<sub>x</sub> authorized account representative for the account that the account will be closed and deleted from the NO<sub>x</sub> 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<sub>x</sub> allowances into the account under section 60 or a statement submitted by the NO<sub>x</sub> 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<sub>x</sub> Allowance Transfers:~~

~~60.1.~~ The NO<sub>x</sub> authorized account representatives seeking recordation of a NO<sub>x</sub> allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NO<sub>x</sub> 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<sub>x</sub> allowance to be transferred; and

~~60.1.c.~~ The printed name and signature of the NO<sub>x</sub> 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<sub>x</sub> allowance transfer, except as provided in subsection 61.2, the Administrator will record a NO<sub>x</sub> allowance transfer by moving each NO<sub>x</sub> 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<sub>x</sub> allowance identified by serial number in the transfer.

~~61.2.~~ A NO<sub>x</sub> allowance transfer that is submitted for recordation following the NO<sub>x</sub> allowance transfer deadline and that includes any NO<sub>x</sub> allowances allocated for an ozone season prior to or the same as the ozone season to which the NO<sub>x</sub> allowance transfer deadline applies will not be recorded until after the Administrator completes the recordation of NO<sub>x</sub> allowances under section 53, for the ozone season in the third year after the NO<sub>x</sub> allowance transfer deadline.

~~61.3.~~ Where a NO<sub>x</sub> 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<sub>x</sub> allowance transfer under section 61, the Administrator will notify each party to the transfer. Notice will be given to the NO<sub>x</sub> authorized account representatives of both the transferor and transferee accounts.

~~62.2.~~ Notification of non-recordation. -- Within 10 business days of receipt of a NO<sub>x</sub> allowance transfer that fails to meet the requirements of subsection 61.1, the Administrator will notify the NO<sub>x</sub> 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<sub>x</sub> allowance transfer for recordation following notification of non-

recording:

~~§45-26-70. General Monitoring Requirements:~~

~~The owners and operators and to the extent applicable, the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit, shall comply with the monitoring, recordkeeping and reporting requirements as provided in sections 70 through 76 and subpart II 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<sub>x</sub> Budget unit," "NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Budget unit.~~

~~70.1. Requirements for installation, certification and data accounting. The owner or operator of each NO<sub>x</sub> Budget unit shall meet the following requirements:~~

~~70.1.a. Install all monitoring systems required under this subpart for monitoring NO<sub>x</sub> mass emissions. This includes all systems required to monitor NO<sub>x</sub> emission rate, NO<sub>x</sub> concentration, heat input rate and stack flow rate, in accordance with 40 CFR §75.71 and 40 CFR §75.72;~~

~~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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Budget unit under subsection 4.1 that commences operation before January 1, 2003 and that is not subject to or does not meet the deadline under subdivision 70.2.a, by May 1, 2003;~~

~~70.2.c. For the owner or operator of a NO<sub>x</sub> Budget unit under subsection 4.1 that commences operation on or after January 1, 2003 and that reports on an annual basis under section 74.4 by the later of the following dates:~~

~~70.2.c.1. May 1, 2003; 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<sub>x</sub> Budget unit under subsection 4.1 that commences operation on or after January 1, 2003 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Budget unit under subdivisions 70.2.c or 70.2.d shall determine, record and report NO<sub>x</sub> mass emissions, heat input rate and any other values required to determine NO<sub>x</sub> mass emissions (e.g., NO<sub>x</sub> emission rate and heat input rate, or NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub>~~

~~Budget unit shall operate the unit so as to discharge, or allow to be discharged, NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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 Secretary 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> authorized account representative shall resubmit the petition to the Administrator under subsection 75.1 to determine if the approval applies under the NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures. 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> authorized account representative shall submit to the Administrator, EPA Region III and the Secretary written notice of the dates of certification in accordance with section 73:~~

~~71.2.c.2. Certification application. The NO<sub>x</sub> authorized account representative shall submit to the Administrator, EPA Region III and the Secretary 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 exempted 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<sub>x</sub> Budget Trading Program for a period not to exceed 120 days after receipt by the Secretary 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 Secretary does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Secretary.~~

~~71.2.c.4. Certification application formal approval process. -- The Secretary 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 Secretary 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<sub>x</sub> 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 Secretary 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 Secretary. If the certification application is not complete, then the Secretary will issue a written~~

~~notice of incompleteness that sets a reasonable date by which the NO<sub>x</sub> authorized account representative must submit the additional information required to complete the certification application. If the NO<sub>x</sub> authorized account representative does not comply with the notice of incompleteness by the specified date, then the Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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<sub>x</sub> emission rate and heat input rate or intends to determine or determines NO<sub>x</sub> mass emissions using the low mass emission excepted methodology under 40 CFR §75.19, the maximum potential NO<sub>x</sub> 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<sub>x</sub> mass emissions using a NO<sub>x</sub> pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO<sub>x</sub> 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<sub>x</sub> 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 Secretary'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<sub>x</sub>~~

~~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<sub>x</sub> Budget Trading Program as of the date on which the NO<sub>x</sub> 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 Secretary's review;~~

~~71.3.b. For a unit that has monitoring equipment initially certified or recertified for the NO<sub>x</sub> Budget Trading Program as of the date on which the NO<sub>x</sub> 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 Secretary's review; and~~

~~71.3.c. For a unit that has monitoring equipment initially certified or recertified for the NO<sub>x</sub> Budget Trading Program as of the date on which the NO<sub>x</sub> 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 Secretary's review.~~

~~71.4. Certification/recertification procedures for alternative monitoring systems. -- The NO<sub>x</sub> 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<sub>x</sub> Budget Trading Program. The NO<sub>x</sub> 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 Secretary 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 Secretary or the Administrator. By issuing the notice of disapproval, the Secretary 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<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget unit shall submit written notice to the Administrator, EPA Region III and the Secretary in accordance with 40 CFR §75.61.~~

~~73.2. For any unit that does not have an Acid Rain emissions limitation, the Secretary may waive the requirement to notify the Administrator and EPA Region III in subsection 73.1.~~

~~§45-26-74. Recordkeeping and Reporting:~~~~74.1. General provisions:~~

~~74.1.a. The NO<sub>x</sub> 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<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget unit subject to an Acid Rain emissions 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<sub>x</sub> authorized account representative shall submit an application to the Administrator, EPA Region III and the Secretary 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<sub>x</sub> 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<sub>x</sub> Budget unit chooses to meet the annual reporting requirements of sections 70 through 76, the NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter beginning with:~~

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

~~74.4.a.2. For a unit that commences operation on or before May 1, 2003 and is not subject to paragraph 74.4.a.1, the earlier of the 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, 2003, the calendar quarter covering May 1, 2003 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2003; or~~

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

~~74.4.b. If a NO<sub>x</sub> Budget unit is not subject to an Acid Rain emission limitation, then the NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> authorized account representative shall submit such quarterly reports, beginning with:~~

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

~~74.4.b.2.B. For a unit that commences operation on or before May 1, 2003 and that is not subject to paragraph 74.4.b.1, the calendar quarter covering May 1 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under paragraph 71.2.c.3 or subsection 71.3 or the first hour of May 1, 2003; or~~

~~74.4.b.2.C. For a unit that commences operation after May 1, 2003 and during an ozone season, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commences operation; or~~

~~74.4.b.2.D. For a unit that commences operation after May 1, 2003 and not during an ozone season, the calendar quarter covering the first ozone season after the unit commences operation. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under paragraph 71.2.c.3 or subsection 71.3 or the first hour of May 1 of the first ozone season after the unit commences operation;~~

~~74.4.c. The NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Budget unit (or group of units using a common stack); and~~

~~74.4.d. Compliance certification. -- The NO<sub>x</sub> authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:~~

~~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<sub>x</sub> 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 40 CFR Part 75 and the substitute values do not systematically underestimate NO<sub>x</sub> 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<sub>x</sub> emission rate and NO<sub>x</sub> 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<sub>x</sub> emissions.~~

~~§45-26-75. Petitions:~~

~~75.1. The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 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 Secretary.~~

~~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<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Secretary and the Administrator requesting approval to apply an alternative to any requirement of sections 70 through 76.~~

~~75.2.a. The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Secretary 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<sub>x</sub> 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 Secretary and the Administrator.~~

~~§45-26-76. Additional Requirements to~~

**Provide Heat Input Data:**

~~76.1. The owner or operator of a NO<sub>x</sub> Budget unit that monitors and reports NO<sub>x</sub> mass emissions using a NO<sub>x</sub> 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.~~



# ORIGINAL

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY

IN THE MATTER OF:

PROPOSED REPEAL OF 45CSR26,  
NO<sub>x</sub> BUDGET TRADING PROGRAM  
AS A MEANS OF CONTROL AND  
REDUCTION OF NITROGEN OXIDES FROM  
ELECTRIC GENERATING UNITS

**TRANSCRIPT OF PROCEEDINGS** had or testimony adduced pursuant to the West Virginia Rules of Civil Procedure in the above-entitled action, on the 11<sup>th</sup> day of August, 2008, commencing at 6:24 p.m. and concluding at 6:25 p.m., at the West Virginia Department of Environmental Protection, 601 57<sup>th</sup> Street S.E., Charleston, Kanawha County, West Virginia, taken by Jo Ann Wilson, Certified Court Reporter, duly certified by the West Virginia Supreme Court of Appeals and Notary of West Virginia, pursuant to notice to all interested parties.

BEFORE: JAMES MASON, Moderator

**NANCY MCNEALY**  
CERTIFIED COURT REPORTER  
Post Office Box 13415  
Charleston, West Virginia 25360-0415  
(304) 988-2873 FAX (304) 988-1419

I N D E X

Reporter's Certificate.....Page 5

1 MR. MASON: This public hearing will now  
2 come to order on this 11<sup>th</sup> day of August, 2008, at the West  
3  
4 Headquarters. Comments and testimony will be accepted  
5 until the close of this hearing, and will be made part of  
6 the rulemaking record. Any question regarding revisions to  
7 the rules, or repeal, will be included with your comments.  
8 Any such question will be answered as part of the response  
9 to comments in the rulemaking record.

10 The purpose of this public hearing is to  
11 satisfy state rulemaking requirements by accepting comments  
12 on the Proposed Repeal of 45CSR26, NOx Budget Trading  
13 Program as a Means of Control and Reduction of Nitrogen  
14 Oxides from Electric Generating Units. This rule contains  
15 ozone season NOx reduction requirements which apply to  
16 electric generating units which have an electric generating  
17 capacity greater than 250 megawatts.

18 The Division of Air Quality has proposed to  
19 repeal 45CSR26 due to the anticipated implementation of  
20 programs under the Clean Air Interstate Rule. However, the  
21 Division acknowledges the recent federal court decision  
22 which vacated the Clean Air Interstate Rule. The  
23 ramifications of this court decision are significant, and  
24 may affect the Division's plan to repeal this rule.

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The floor is now open for comments.

(There being no comments,  
Proceedings resumed as follows.)

MR. MASON: There being nothing further,  
this public hearing for the Proposed Repeal of 45CSR26 is  
concluded.

(WHEREUPON, the public hearing was concluded.)

**REPORTER'S CERTIFICATE**

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to wit:

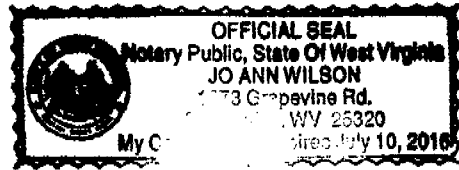
I, **JO ANN WILSON**, Certified Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 20<sup>th</sup> day of August, 2008.

My commission expires July 10, 2016.

*Jo Ann Wilson, C.C.R.*

Certified Court Reporter





08-21-08P03:36 R0VD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Mr. John A. Benedict, Director  
Division of Air Quality  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> St. SE  
Charleston, WV 25304

August 18, 2008

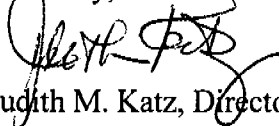
Dear Mr. Benedict:

Thank you for the opportunity to comment on West Virginia's proposed repeal of Rules 45CSR1 and 45CSR26 which implemented the NOx SIP Call. We appreciate West Virginia's diligence in complying with the Clean Air Interstate Rule (CAIR) and understand that the repeal of 45CSR1 and 45CSR26 is consistent with the requirements of 45CSR40, which was adopted to implement the State's ozone season CAIR trading program but also included the State's other NOx SIP Call requirements.

As you are aware, on June 11, 2008, the U.S. Court of Appeals for the D.C. Circuit issued an opinion in *North Carolina v. EPA*, No. 05-1244 (D.C. Cir. July 11, 2008) vacating CAIR and its associated federal implementation plan in its entirety. EPA is still reviewing the court decision to determine its impact and an appropriate course of action. The Court's opinion, however, explicitly notes that "in the absence of CAIR, the NOx SIP Call trading program will continue because EPA terminated the NOx SIP Call only as part of the CAIR rulemaking." Slip op. at 59-60. The proposed repeal of 45CSR1 and 45CSR26 is inconsistent with this language in the court ruling and could not be approved as a SIP revision unless the decision to vacate CAIR is altered. In light of the uncertainty regarding CAIR, EPA recommends that WV not proceed with the repeal of 45CSR1 and 45CSR26.

Please enter these comments into the public record. Should you have any questions pertaining to these comments, please do not hesitate to contact me, or have your staff person contact Marilyn Powers of my staff at (215) 814-2308.

Sincerely,

  
Judith M. Katz, Director  
Air Protection Division

cc: Fred Durham, WVDEP



## 45CSR26

### NO<sub>x</sub> BUDGET TRADING PROGRAM AS A MEANS OF CONTROL AND REDUCTION OF NITROGEN OXIDES FROM ELECTRIC GENERATING UNITS

#### RESPONSE TO COMMENTS

On July 11, 2008, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on August 11, 2008 to accept oral comments on the proposed repeal of legislative rule 45CSR26. Written comments were also accepted through 6:00 PM on Monday, August 11, 2008. One commenter submitted written comments regarding the proposed repeal of rule 45CSR26, and no commenter provided verbal comments. DAQ addresses the written comment below.

#### I. COMMENTER: U.S. Environmental Protection Agency

**COMMENT A.** The commenter states, *"The proposed repeal of 45CSR1 and 45CSR26 is inconsistent with ... the court ruling and could not be approved as a SIP revision unless the decision to vacate CAIR is altered. In light of the uncertainty regarding CAIR, EPA recommends that WV not proceed with the repeal of 45CSR1 and 45CSR26."*

**RESPONSE A.** The DEP acknowledges the intimate relationship between 45CSR1, 45CSR26 and the seasonal NO<sub>x</sub> component of the CAIR. The DEP intends to withdraw the repeals of 45CSR1 and 45CSR26 if the relevant requirements of CAIR cannot be salvaged in a timely manner. However, because of the extension of the time to file petitions for rehearing or rehearing en banc, a mandate to vacate the Clean Air Interstate Rule (CAIR) has not yet been ordered by the U.S. District Court of Appeals. Therefore the vacatur is not in effect at this time. There remains considerable uncertainty regarding the CAIR vacatur and its substantial ramifications. This issue has attracted national attention and could result in potential congressional action. DEP believes it prudent to wait until a more definitive indication of CAIR's fate is recognized. Depending on future information regarding the vacatur of CAIR, the department may subsequently withdraw the proposed repeal of 45CSR1 in accordance with WV Code §29A-3-14.