

# Chapter 3745-14 Nitrogen Oxides-Reasonably Available Control Technology

## 3745-14-01 Definitions and General Provisions.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the "Incorporation by Reference" section at the end of this rule.]

(A) This chapter establishes the provisions and requirements to implement a NO<sub>x</sub> budget trading, portland cement kilns, and a stationary (large) internal combustion engines program in the state of Ohio as a means of control and reduction of NO<sub>x</sub> emissions. The director authorizes the administrator to assist the director in implementing the state NO<sub>x</sub> budget trading program as a participant in the federal NO<sub>x</sub> budget trading program by carrying out the functions set forth for the administrator in this chapter.

(B) Definitions.

(1) Except as otherwise provided in this rule, the definitions in rule [3745-15-01](#) of the Administrative Code shall apply to this chapter.

(2) As used in this rule and in rules [3745-14-02](#) to [3745-14-10](#) of the Administrative Code (pertaining to NO<sub>x</sub> budget trading program and other sources identified in paragraph (A) of this rule):

(a) "Account certificate of representation" means the completed and signed submission required by rule [3745-14-02](#) of the Administrative Code 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.

(b) "Account number" means the identification number given by the administrator to each NO<sub>x</sub> allowance tracking system account.

(c) "Acid Rain emissions limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or NO<sub>x</sub> under the acid rain program under Title IV of the Clean Air Act.

(d) "Administrator" means the administrator of the United States environmental protection agency or the administrator's duly authorized representative.

(e) "Allocate" or "allocation" means the determination by the director 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.

(f) "ASTM" means the "American Society for Testing and Materials," 100 Barr Harbor Drive, West Conshohocken, Pennsylvania.

(g) “Automated data acquisition and handling system” or “DAHS” means that component of the CEMS, or other emissions monitoring system approved for use under rule [3745-14-08](#) of the Administrative Code, 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 rule [3745-14-08](#) of the Administrative Code.

(h) “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, excluding CO boilers associated with combusting CO from fluidized catalytic crackers at petroleum refineries.

(i) “Btu” means British thermal unit.

(j) “CAA” means the Clean Air Act as contained in 42 USC 7401 to 42 USC 7671q.

(k) “CO” means carbon monoxide.

(l) “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.

(m) “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.

(n) “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 paragraph (C)(2) or (D) of this rule or rule [3745-14-09](#) of the Administrative Code, for a unit that is a NO<sub>x</sub> budget unit under paragraph (C)(1) of this rule 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 paragraph (C)(2) or (D) of this rule or rule [3745-14-09](#) of the Administrative Code, for a unit that is not a NO<sub>x</sub> budget unit under paragraph (C)(1) of this rule on the date the unit commences commercial operation, the date the unit becomes a NO<sub>x</sub> budget unit under paragraph (C)(1) of this rule shall be the unit’s date of commencement of commercial operation.

(o) “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 paragraph (C)(2) or (D) of this rule or rule [3745-14-09](#) of the Administrative Code, for a unit that is a NO<sub>x</sub> budget unit under paragraph (C)(1) of this rule 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 paragraph (C)(2) or (D) of this rule or rule [3745-14-09](#) of the Administrative Code, for a unit that is not a NO<sub>x</sub> budget unit under paragraph (C)(1) of this rule on the date of commencement of operation, the date the unit becomes a NO<sub>x</sub> budget unit under paragraph (C)(1) of this rule shall be the unit’s date of commencement of operation.

(p) “Common stack” means a single flue through which emissions from two or more units are exhausted.

(q) “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 rule [3745-14-06](#) of the Administrative Code 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 a control period for the purpose of meeting the unit’s NO<sub>x</sub> budget emission limitation.

(r) “Continuous emission monitoring system” or “CEMS” means the equipment required under rule [3745-14-08](#) of the Administrative Code to sample, analyze, measure, and provide, by readings taken at least once every fifteen minutes (using an automated DAHS, a permanent record of NO<sub>x</sub> emissions, stack gas volumetric flow rate or stack gas moisture content (as applicable), in a manner consistent with rule [3745-14-08](#) of the Administrative Code. The following are the principal types of continuous emission monitoring systems required under rule [3745-14-08](#) of the Administrative Code and 40 CFR Part 75:

(i) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh).

(ii) A NO<sub>x</sub> concentration monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor and an automated DAHS. A NO<sub>x</sub> concentration monitoring system provides a permanent, continuous record of NO<sub>x</sub> emissions in units of parts per million (ppm).

(iii) A NO<sub>x</sub> emission rate (or NO<sub>x</sub>-diluent) monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor, a diluent gas (carbon dioxide or oxygen) monitor, and an automated DAHS. A NO<sub>x</sub> concentration monitoring system provides a permanent, continuous record of: NO<sub>x</sub> concentration in units of parts per million, diluent gas concentration in units of percent carbon dioxide or oxygen, and NO<sub>x</sub> emission rate in units of pounds per mmBtu.

(iv) A moisture monitoring system, as defined in 40 CFR 75.11(b)(2). A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of percent water.

(s) “Control period” means the period beginning May first of a year and ending on September thirtieth of the same year, inclusive.

(t) “DAHS” means data acquisition and handling system.

(u) “Director” means the director of the Ohio environmental protection agency.

(v) “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.

(w) “Emissions” means air pollutants exhausted from a unit or source into the atmosphere, 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 rule [3745-14-08](#) of the Administrative Code.

(x) “Energy efficiency/renewable energy project” means any project that, during the control period, reduces end-use demand for electricity, including demand-side management practices, or displace electrical energy utilization through the use of wind power, solar power, biomass or landfill methane generation.

(y) “Energy information administration” means the energy information administration of the United States department of energy.

(z) “Excess emissions” means any tonnage of NO<sub>x</sub> emitted by a NO<sub>x</sub> budget unit during a control period that exceeds the NO<sub>x</sub> budget emissions limitation for the unit.

(aa) “Fossil fuel” means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(bb) “Fossil fuel-fired” means, with regard to a unit:

(i) 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 fifty per cent of the annual heat input, on a Btu basis, during 1995, or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;

(ii) For units that commenced operation on or after January 1, 1996 and before January 1, 1997, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty per cent of the annual heat input, on a Btu basis, during 1996; or

(iii) For units that commence operation on or after January 1, 1997:

(a) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty per cent of the annual heat input, on a Btu basis, during any year; or

(b) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than fifty per cent 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.

(cc) “General account” means a NO<sub>x</sub> allowance tracking system account, established under rule [3745-14-06](#) of the Administrative Code, that is not a compliance account or an overdraft account.

(dd) “Generator” means a device that produces electricity.

(ee) “Heat input” means the product (in mmBtu per time) of the gross calorific value of the fuel (in mmBtu per pound) and the fuel feed rate into a combustion device (in pounds of fuel per time), as measured, recorded, and reported to the director by the NO<sub>x</sub> authorized account representative and as determined by the director in accordance with rule [3745-14-08](#) of the

Administrative Code, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(ff) “Heat input rate” means the amount of heat input (in mmBtu) divided by unit operating time (in hours) 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 hours) during which the unit combusts the fuel.

(gg) “Innovative technology project” means any project utilizing technology that has not been adequately demonstrated in practice, but that would have a substantial likelihood of reducing NO<sub>x</sub> emissions compared to current practices. An innovative technology project could include technology to decrease electrical energy or fuel use either in stationary or mobile sources.

(hh) “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:

(i) For the life of the unit; or

(ii) For a cumulative term of no less than thirty years, including contracts that permit an election for early termination; or

(iii) For a period equal to or greater than twenty-five years or seventy per cent 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.

(ii) “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.

(jj) “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 must be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value must be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in per cent carbon dioxide) or the minimum oxygen concentration (in per cent oxygen).

(kk) “Maximum potential NO<sub>x</sub> emission rate” means the emission rate of NO<sub>x</sub> (in pounds per mmBtu) calculated in accordance with Section 3 of Appendix F of 40 CFR Part 75, using the maximum potential concentration of NO<sub>x</sub> as defined in Section 2 of Appendix A of 40 CFR Part 75, and either the maximum oxygen concentration (in per cent oxygen) or the minimum carbon dioxide concentration (in per cent carbon dioxide), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

(ll) “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.

(mm) “mmBtu” means million British thermal unit.

(nn) “MWe” means megawatt electrical.

(oo) “Monitoring system” means any monitoring system that meets the requirements of rule [3745-14-08](#) of the Administrative Code, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

(pp) “Most stringent state or federal NO<sub>x</sub> emissions limitation” means the lowest NO<sub>x</sub> emission limitation (in pounds per mmBtu) that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(qq) “Nameplate capacity” means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States department of energy standards.

(rr) “Non-Title V permit” means a federally enforceable permit administered by the director pursuant to the Clean Air Act and regulatory authority under the Clean Air Act, other than Title V of the Clean Air Act and Chapter 3745-77 of the Administrative Code.

(ss) “NO<sub>x</sub>” means all oxides of nitrogen which are determined to be ozone precursors, including, but not limited to, nitrogen oxide and nitrogen dioxide, but excluding nitrous oxide.

(tt) “NO<sub>x</sub> allowance” means a limited authorization by the director or the Administrator under the NO<sub>x</sub> budget trading program to emit up to one ton of NO<sub>x</sub> during the control period of the specified year or of any year thereafter, except as provided under paragraph (E)(6) of rule [3745-14-06](#) of the Administrative Code. 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 paragraph (C)(2)(a) or (D) of this rule 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 this chapter, except paragraph (B), (C) or (D) of rule [3745-14-05](#) of the Administrative Code or paragraph (I) of rule [3745-14-09](#) of the Administrative Code, “NO<sub>x</sub> allowance” also includes an authorization to emit up to one ton of NO<sub>x</sub> during the control period of the specified year or of any year thereafter by the state or the Administrator in accordance with a state NO<sub>x</sub> budget trading program established, and approved and administered by the Administrator, pursuant to 40 CFR 51.121 or in accordance with the NO<sub>x</sub> budget trading program established by the Administrator in accordance with 40 CFR 52.34.

(uu) “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 a control period, determined in accordance with rules [3745-14-06](#) and [3745-14-08](#) of the Administrative Code, or for any other allowance surrender obligation under this chapter.

(vv) “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 rule [3745-14-06](#) of the Administrative Code, in a NO<sub>x</sub> allowance tracking system account.

(ww) “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.

(xx) “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.

(yy) “NO<sub>x</sub> allowance transfer deadline” means midnight of November thirtieth or, if November thirtieth is not a business day, midnight of the first business day thereafter and is the deadline by which NO<sub>x</sub> allowances may 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 control period immediately preceding such deadline.

(zz) “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 rule [3745-14-02](#) of the Administrative Code, 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 rule [3745-14-06](#) of the Administrative Code, to transfer or otherwise dispose of NO<sub>x</sub> allowances held in the general account.

(aaa) “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 paragraphs (E)(1), (E)(2), (E)(5) and (E)(6) of rule [3745-14-06](#) of the Administrative Code in a control period adjusted by deductions of such NO<sub>x</sub> allowances to account for actual heat input under paragraph (C)(5) of rule [3745-14-05](#) of the Administrative Code for the control period, or to account for excess emissions for a prior control period under paragraph (E)(4) of rule [3745-14-06](#) of the Administrative Code, or to account for withdrawal from the NO<sub>x</sub> budget trading program or for a change in regulatory status, of a NO<sub>x</sub> budget opt-in unit under paragraph (G) or (H) of rule [3745-14-09](#) of the Administrative Code.

(bbb) “NO<sub>x</sub> budget opt-in permit” means a NO<sub>x</sub> budget permit covering a NO<sub>x</sub> budget opt-in unit.

(ccc) “NO<sub>x</sub> budget opt-in unit” means a unit that has been elected to become a NO<sub>x</sub> budget unit under the NO<sub>x</sub> budget trading program and whose NO<sub>x</sub> budget opt-in permit has been issued and is in effect under rule [3745-14-09](#) of the Administrative Code.

(ddd) “NO<sub>x</sub> budget permit” means the legally binding and federally enforceable written document, or portion of such document, issued by the director, including any permit revisions, specifying the NO<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.

(eee) “NO<sub>x</sub> budget source” means a source that includes one or more NO<sub>x</sub> budget units.

(fff) “NO<sub>x</sub> budget trading program” means a multi-state NO<sub>x</sub> air pollution control and emission reduction program approved and administered by the Administrator pursuant to 40 CFR 51.121 or established by the Administrator pursuant to 40 CFR 52.34, as a means of mitigating the interstate transport of ozone and NO<sub>x</sub>.

(ggg) “NO<sub>x</sub> budget unit” means a unit that is subject to the NO<sub>x</sub> emissions limitation under paragraph (C) of this rule or paragraph (A) of rule [3745-14-09](#) of the Administrative Code.

(hhh) “Operating” means, with regard to a unit under paragraph (C)(1)(d)(ii) of rule [3745-14-03](#) or paragraph (A) of rule [3745-14-09](#) of the Administrative Code, having documented heat input for more than eight hundred seventy-six hours in the six months immediately preceding the submission of an application for an initial NO<sub>x</sub> budget permit under paragraph (D)(1) of rule [3745-14-09](#) of the Administrative Code. The unit’s documented heat input shall be determined in accordance with 40 CFR Part 75 if the unit was otherwise subject to the requirements of 40 CFR Part 75 during that six-month period or shall be based on the best available data reported to the director for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 during that six-month period.

(iii) “Operator” means any person who operates, controls, or supervises a NO<sub>x</sub> budget unit, a NO<sub>x</sub> budget source, or unit for which an application for a NO<sub>x</sub> budget opt-in permit under paragraph (D) of rule [3745-14-09](#) of the Administrative Code is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(jjj) “Opt-in” means to be elected to become a NO<sub>x</sub> budget unit under the NO<sub>x</sub> budget trading program through a final, effective NO<sub>x</sub> budget opt-in permit under rule [3745-14-09](#) of the Administrative Code.

(kkk) “Overdraft account” means the NO<sub>x</sub> allowance tracking system account, established by the administrator under rule [3745-14-06](#) of the Administrative Code, for each NO<sub>x</sub> budget source where there are two or more NO<sub>x</sub> budget units.

(lll) “Owner” means any of the following persons:

(i) Any holder of any portion of the legal or equitable title in a NO<sub>x</sub> budget unit or in a unit for which an application for a NO<sub>x</sub> budget opt-in permit under paragraph (D) of rule [3745-14-09](#) of the Administrative Code submitted and not denied or withdrawn; or

(ii) Any holder of a leasehold interest in a NO<sub>x</sub> budget unit or in a unit for which an application for a NO<sub>x</sub> budget opt-in permit under paragraph (D) of rule [3745-14-09](#) of the Administrative Code is submitted and not denied or withdrawn; or

(iii) Any purchaser of power from a NO<sub>x</sub> budget unit or from a unit for which an application for a NO<sub>x</sub> budget opt-in permit under paragraph (D) of rule [3745-14-09](#) of the Administrative Code is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement (however, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO<sub>x</sub> budget unit or the unit for which an application for a NO<sub>x</sub> budget opt-in permit under paragraph (D) of rule [3745-14-09](#) of the Administrative Code is submitted and not denied or withdrawn); or

(iv) 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.

(mmm) "Per cent monitor data availability" means, for purposes of paragraph (D)(1) of rule [3745-14-05](#) and paragraph (E)(2) of rule [3745-14-09](#) of the Administrative Code, total unit operating hours for which quality-assured data were recorded in accordance with rule [3745-14-08](#) of the Administrative Code in a control period divided by the total number of unit operating hours in the control period, and multiplied by one hundred per cent.

(nnn) "Potential electrical output capacity" means thirty three per cent of a unit's maximum design heat input.

(ooo) "Receive" or "receipt of" means, when referring to the director or the administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the director or the Administrator in the regular course of business.

(ppp) "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.

(qqq) "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.

(rrr) "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 paragraph (D)(3) of rule [3745-14-06](#) of the Administrative Code.

(sss) "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 Clean Air Act. For purposes of Section 502(c) of the Clean Air Act, a source, including a source with multiple units, shall be considered a single facility.

(ttt) "State" means one of the forty-eight contiguous states or a portion thereof or the District of Columbia that is subject to a NO<sub>x</sub> budget trading program under Section 110(c) or Section 126 of the Clean Air Act.

(uuu) "State trading program budget" means the total number of NO<sub>x</sub> tons apportioned to all NO<sub>x</sub> budget units in the state, in accordance with the NO<sub>x</sub> budget trading program, for use in a given control period.

(vvv) "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(i) In person;

(ii) By United States postal service; or

(iii) 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.

(www) “Title V operating permit” means a permit issued under Chapter 3745-77 of the Administrative Code.

(xxx) “Title V operating permit regulations” means Chapters 3745-77 and 3745-78 of the Administrative Code.

(yyy) “Ton” or “tonnage” means any “short ton” (i.e., two thousand pounds).

For the purpose of determining compliance with the NO<sub>x</sub> budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with rule [3745-14-08](#) of the Administrative Code, 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.

(zzz) “Unit” means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(aaaa) “Unit operating day” means a calendar day in which a unit combusts any fuel.

(bbbb) “Unit operating hour” or “hour of unit operation” means any hour (or fraction of an hour) during which a unit combusts any fuel.

(cccc) “Utilization” means the heat input (expressed in mmBtu/time) for a unit. The unit’s total heat input for the control period in each year shall be determined in accordance with 40 CFR Part 75 if the NO<sub>x</sub> budget unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or shall be based on the best available data reported to the administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

(3) As used in rule [3745-14-11](#) of the Administrative Code (pertaining to NO<sub>x</sub> budget program requirements for portland cement manufacturing):

(a) “Clinker” means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(b) “Long dry kiln” means a kiln fourteen feet or larger in diameter, four hundred feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

(c) “Long wet kiln” means a kiln fourteen feet or larger in diameter, four hundred feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

(d) “Low-NO<sub>x</sub> burners” means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing, and establish fuel-rich zones for initial combustion.

(e) “Malfunction” means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual

manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(f) “Mid-kiln system firing” means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln system using a specially designed feed injection mechanism for the purpose of decreasing NO<sub>x</sub> emissions through:

(i) Burning part of the fuel at a lower temperature; and

(ii) Reducing conditions at the solid fuel injection point that may destroy some of the NO<sub>x</sub> formed upstream in the kiln burning zone.

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

(h) “Portland cement kiln” means a system, including any solid, gaseous or liquid fuel combustion equipment, used to heat, calcine and fuse raw materials, including limestone and clay, to produce portland cement clinker.

(i) “Precalciner kiln” means a kiln system where the feed to the kiln is preheated in cyclone chambers which utilize a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

(j) “Preheater kiln” means a kiln system where the feed to the kiln is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

(k) “Shutdown” means the cessation of operation of a portland cement kiln for any purpose.

(l) “Startup” means the setting in operation of a portland cement kiln for any purpose.

(4) As used in rule [3745-14-12](#) of the Administrative Code (pertaining to NO<sub>x</sub> budget program requirements for stationary internal combustion engines):

(a) “Affected engine” means any stationary internal combustion engine that is a large NO<sub>x</sub> SIP call engine, or other stationary internal combustion engine that is subject to NO<sub>x</sub> control under a compliance plan established pursuant to paragraph (B) of rule [3745-14-12](#) of the Administrative Code.

(b) “Engine seasonal NO<sub>x</sub> 2007 tonnage reduction” means the year 2007 control period NO<sub>x</sub> emissions reductions value for a large NO<sub>x</sub> SIP call engine which is calculated as the difference between the 2007 base NO<sub>x</sub> emissions and the 2007 budget NO<sub>x</sub> emissions contained in the NO<sub>x</sub> SIP call engine inventory. The total engine seasonal NO<sub>x</sub> 2007 tonnage reduction for all large NO<sub>x</sub> SIP call engines in Ohio is 2730 tons.

(c) “Facility seasonal NO<sub>x</sub> 2007 tonnage reduction” means the total of the engine seasonal NO<sub>x</sub> 2007 tonnage reductions attributable to all of an owner/operator’s large NO<sub>x</sub> SIP call engines.

(d) “Large NO<sub>x</sub> SIP call engine” means a stationary internal combustion engine identified and designated as “large” in the NO<sub>x</sub> SIP call engine inventory (as defined in paragraph (B)(4)(e) of

this rule) as emitting more than one ton of NO<sub>x</sub> emissions per average control period day in 1995.

(e) “NO<sub>x</sub> SIP call engine inventory” means the inventory of internal combustion engines compiled by the United States environmental protection agency as part of the NO<sub>x</sub> SIP call rule, including the Federal Register notice entitled “Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone,” and the adjustment of the 2007 budget NO<sub>x</sub> control efficiency to eighty-two per cent for large gas-fired engines discussed in the Federal Register notice entitled “Interstate Ozone Transport: Response to Court Decisions on the NO<sub>x</sub> SIP Call, NO<sub>x</sub> SIP Call Technical Amendments, and Section 126 Rules.”

(f) “Past NO<sub>x</sub> emission rate” means the emission rate of an affected engine in grams per brake horsepower-hour as determined by performance testing consistent with the requirements of 40 CFR Part 60, Appendix A. Where such performance test data are not available, the appropriate past NO<sub>x</sub> emission rate shall be evaluated and approved or denied by the director on a case-by-case basis using, for example, appropriate emission factors or data from the NO<sub>x</sub> SIP call engine inventory. For large NO<sub>x</sub> SIP call engines, the past NO<sub>x</sub> emission rate is the uncontrolled emission rate.

(g) “Projected operating hours” means the projected actual number of hours of operation per control period for an affected engine.

(h) “Projected NO<sub>x</sub> emission rate” means the projected emission rate in grams per brake horsepower-hour after installation of controls on an affected engine.

(i) “Stationary internal combustion engine” means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than twelve consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

#### (C) Applicability.

(1) The following units shall be 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 chapter:

(a) For EGUs:

(i) For units, other than cogeneration units, that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than twenty-five MWe and produced electricity for sale under a firm contract to the electric grid;

(ii) For units, other than cogeneration units, that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit serving during 1997 or 1998 a generator that had a nameplate capacity greater than twenty-five MWe and produced electricity for sale under a firm contract to the electric grid; and

(iii) For units, other than cogeneration 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 twenty-five MWe and produces electricity for sale.

(iv) For cogeneration units:

(a) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1996 a generator with a nameplate capacity greater than twenty-five MWe and failing to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the “Acid Rain Program;”

(b) For units commencing operation in 1997 or 1998, a unit serving during 1997 or 1998 a generator with a nameplate capacity greater than twenty-five MWe and failing to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the “Acid Rain Program;”

(c) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator with a nameplate capacity greater than twenty-five MWe and failing to qualify as an unaffected unit under 40 CFR 72.6(b)(4) under the “Acid Rain Program” for any year.

(b) For non-EGUs:

(i) For units, other than cogeneration units, that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than two hundred fifty mmBtu per hour and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid;

(ii) For units, other than cogeneration units, that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit that has a maximum design heat input greater than two hundred fifty mmBtu per hour and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid;

(iii) For units, other than cogeneration units, that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour that:

(a) At no time serves a generator producing electricity for sale; or

(b) At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of twenty-five MWe or less and has the potential to use no more than fifty per cent of the potential electrical output capacity of the unit.

(iv) For cogeneration units:

(a) For units commencing operation before January 1, 1997, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour and qualifying as an unaffected unit under 40 CFR 72.6(b)(4) under the “Acid Rain Program” for 1995 and 1996;

(b) For units commencing operation in 1997 or 1998, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour and qualifying as an unaffected unit under 40 CFR 72.6(b)(4) under the “Acid Rain Program” for 1997 and 1998;

(c) For units commencing on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour and qualifying as an unaffected unit under 40 CFR 72.6(b)(4) under the “Acid Rain Program” for each year.

(2) The following units shall be exempt from the requirements of the NO<sub>x</sub> budget trading program:

(a) Any unit to which Chapter 3745-109 of the Administrative Code applies.

[Comment: The above exemption applies to units under paragraph (C)(1) of this rule or units under paragraph (A) of rule [3745-14-09](#) of the Administrative Code, for any ozone season to which 40 CFR 51.121(r) applies. Ohio EPA is inserting this language because the United States environmental protection agency will not administer the NO<sub>x</sub> SIP Call trading program after 2008 (see 40 CFR 51.121(r) ). In order to continue to meet the Ohio’s NO<sub>x</sub> SIP Call obligations, Ohio has chosen to expand the applicability of Ohio’s CAIR program as it pertains to the CAIR ozone season rules (rules [3745-109-01](#) and [3745-109-15](#) to 3745-109-21 of the Administrative Code) to cover all units that would otherwise be covered by Ohio’s NO<sub>x</sub> SIP Call trading program (see 40 CFR 51.123(bb)(1) and (3)).

The federal CAIR program was vacated by the D.C. circuit court of appeals on July 11, 2008. The court then remanded, without vacatur, the federal CAIR program on December 23, 2008 allowing the full operation of the federal CAIR program and Ohio’s CAIR program beginning with the January 1, 2009 control period. The court’s remand requires the United States environmental protection agency to provide for remedy of certain flaws identified by the court in the original vacatur. An effective federal CAIR trading program is necessary for the operation of Ohio’s CAIR program. Should the United States environmental protection agency eliminate or suspend the CAIR program, units under paragraph (C)(1) of this rule or units under paragraph (A) of rule [3745-14-09](#) of the Administrative Code would need to meet the requirements of this chapter following the elimination or suspension of the federal CAIR program, provided that 40 CFR 51.121(r) no longer applies and the Administrator will carry out the functions set forth for the administrator in this chapter.]

(b) A unit under paragraph (C)(1) of this rule that has a federally enforceable permit that includes a NO<sub>x</sub> emission limitation restricting NO<sub>x</sub> emissions during a control period to twenty-five tons or less and restricts the unit to burning only natural gas or fuel oil during a control period in 2004 or later and that includes the special provisions in paragraph (C)(2)(e) of this rule shall be exempt from the requirements of the NO<sub>x</sub> budget trading program, except for the provisions of this paragraph, paragraphs (B), (C)(1) and (F) of this rule and rules [3745-14-05](#) to [3745-14-07](#) of the Administrative Code. The NO<sub>x</sub> emission limitation under this paragraph shall restrict NO<sub>x</sub> emissions during the control period by one of the following methods:

(i) A restriction on unit operating hours calculated by dividing the federally enforceable emission limitation, in tons, determined in accordance with paragraph (C)(2)(b) of this rule, 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 applicable to the unit under 40 CFR 75.19(c), Table LM-2; or

(ii) A restriction on unit fuel usage calculated by dividing the federally enforceable emission limitation, in tons, determined in accordance with paragraph (C)(2)(b) of this rule, by the product of the heat value of the fuel to be used multiplied by the default NO<sub>x</sub> emission rate for the fuel to be used as specified in 40 CFR 75.19(c), Table LM-2.

(c) The exemption under paragraph (C)(2)(b) of this rule shall become effective as follows:

(i) 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 paragraph (C)(2)(b) of this rule become final; or

(ii) If the NO<sub>x</sub> emission limitation and the special provisions in the permit under paragraph (C)(2)(b) of this rule become final during a control period and after the first date on which the unit operates during such control period, then the exemption shall become effective on May first of such control period, 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 NO<sub>x</sub> emission limitation and special provisions do not apply to the unit as of such first date of operation, then the exemption under paragraph (C)(2)(b) of this rule shall become effective on October first of the year during which such NO<sub>x</sub> emission limitation and the special provisions become final.

(d) The director shall provide the Administrator written notice of the issuance of any permit under paragraph (C)(2)(b) of this rule and, upon request, a copy of the permit.

(e) The following special provisions apply to units exempt under paragraph (C)(2)(b) of this rule.

(i) A unit exempt under paragraph (C)(2)(b) of this rule shall comply with the restriction on unit operating hours and fuel use described in paragraph (C)(2)(b) of this rule during the control period in each year.

(ii) NO<sub>x</sub> allowances shall be allocated to the unit in accordance with paragraphs (B)(1) to (B)(3) and (C)(1) to (C)(3) of rule [3745-14-05](#) of the Administrative Code. For each control period for which the unit is allocated NO<sub>x</sub> allowances under this paragraph:

(a) The owners and operators of the unit must specify a general account, in which the administrator will record the NO<sub>x</sub> allowances; and

(b) After the administrator records a NO<sub>x</sub> allowance allocation under paragraphs (B)(1) to (B)(3) and (C)(1) to (C)(3) of rule [3745-14-05](#) of the Administrative Code, the administrator will deduct, from the general account under paragraph (C)(2)(e)(ii)(a) of this rule, NO<sub>x</sub> allowances that are allocated for the same or a prior control period as the NO<sub>x</sub> allowances allocated to the unit under paragraphs (B)(1) to (B)(3) and (C)(1) to (C)(3) of rule [3745-14-05](#) of the Administrative Code and that equal the NO<sub>x</sub> emission limitation (in tons of NO<sub>x</sub>) on which the unit's exemption under paragraph (C)(2)(b) of this rule is based. The NO<sub>x</sub> authorized account representative shall ensure that such general account contains the NO<sub>x</sub> allowances necessary for completion of such deduction.

(iii) A unit exempt under paragraph (C)(2)(b) of this rule shall report hours of unit operation or fuel usage during the control period in each year to the director by November first of that year.

(iv) For a period of five years from the date the records are created, the owners and operators of a unit exempt under paragraph (C)(2)(b) of this rule shall retain, at the source that includes the unit, records demonstrating that the conditions of the federally enforceable permit under paragraph (C)(2)(b) of this rule were met, including the restrictions on unit operating hours and fuel usage. The five-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the director or the administrator. The owners and operators bear the burden of proof that the unit met the restriction on unit operating hours and fuel use.

(v) The owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of a unit exempt under paragraph (C)(2)(b) of this rule 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.

(vi) On the earlier of the following dates, a unit exempt under paragraph (C)(2)(b) of this rule shall lose its exemption:

(a) The date on which the restriction on unit operating hours and fuel use described in paragraph (C)(2)(b) of this rule is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any control period starting in 2004; or

(b) The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on

unit operating hours and fuel use described in paragraph (C)(2)(b) of this rule during any control period starting in 2004.

(vii) A unit that loses its exemption in accordance with paragraph (C)(2)(e)(vi) of this rule shall be subject to the requirements of this chapter. For the purpose of applying permitting requirements under rule [3745-14-03](#) of the Administrative Code, allocating allowances under rule [3745-14-05](#) of the Administrative Code, and applying monitoring requirements under rule [3745-14-08](#) of the Administrative Code, the unit shall be treated as commencing operation and, if the unit is covered by paragraph (C)(1)(b) of this rule, commencing commercial operation on the date the unit loses its exemption.

(viii) A unit that is exempt under paragraph (C)(2)(b) of this rule is not eligible to be a NO<sub>x</sub> budget opt-unit under rule [3745-14-09](#) of the Administrative Code.

(D) Retired unit exemption.

(1) This rule applies to any NO<sub>x</sub> budget unit, other than a NO<sub>x</sub> budget opt-in unit, that is permanently retired.

(2) Standard provisions.

(a) Any NO<sub>x</sub> budget unit, other than a NO<sub>x</sub> budget opt-in unit, that is permanently retired shall be exempt from the NO<sub>x</sub> budget trading program, except for the provisions of this rule and rules [3745-14-05](#) to [3745-14-07](#) of the Administrative Code.

(b) The exemption under paragraph (D)(2)(a) of this rule shall become effective the day on which the unit is permanently retired. Within thirty days of permanent retirement, the NO<sub>x</sub> authorized account representative of the unit shall submit a statement to the director. A copy of the statement shall be submitted to the administrator. The statement shall state (in a format prescribed by the director) that the unit is permanently retired and will comply with the requirements of paragraph (D)(3) of this rule.

(c) After receipt of the statement under paragraph (D)(2)(b) of this rule, the director shall amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (D)(2)(a) and (D)(3) of this rule.

(3) Special provisions.

(a) A unit exempt under paragraph (D) of this rule shall not emit any NO<sub>x</sub>, starting on the date that the exemption takes effect.

(b) The director shall allocate NO<sub>x</sub> allowances under rule [3745-14-05](#) of the Administrative Code to a unit exempt under paragraph (D) of this rule. For each control period 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.

(c) For a period of five years from the date the records are created, the owners and operators of a unit exempt under paragraph (D) of this rule shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The five-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the

director or the administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(d) The owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of a unit exempt under this rule 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.

(e) Returning retired units to service.

(i) A unit exempt under paragraph (D) of this rule 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 for the unit not less than twelve months before the later of May 1, 2004 or the date on which the unit resumes operation.

(ii) A unit exempt under paragraph (D) of this rule 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 for the unit not less than twelve months before the later of May 1, 2004 or the date on which the unit is to first resume operation.

(f) On the earlier of the following dates, a unit exempt under paragraph (D) of this rule shall lose its exemption:

(i) The date on which the NO<sub>x</sub> authorized account representative submits a NO<sub>x</sub> budget permit application under paragraph (D)(3)(e) of this rule;

(ii) The date on which the NO<sub>x</sub> authorized account representative is required under paragraph (D)(3)(e) of this rule to submit a NO<sub>x</sub> budget permit application; or

(iii) The date on which the unit resumes operation, if the unit is not required to submit a NO<sub>x</sub> budget permit application.

(g) For the purpose of applying monitoring requirements under rule [3745-14-08](#) of the Administrative Code, a unit that loses its exemption under paragraph (D) of this rule shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

(h) A unit that is exempt under paragraph (D) of this rule is not eligible to be a NO<sub>x</sub> budget opt-in unit under rule [3745-14-09](#) of the Administrative Code.

(E) Standard requirements.

(1) Permit requirements.

(a) The NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget unit or NO<sub>x</sub> budget source required to have a federally enforceable permit for the unit or source shall:

(i) Submit to the director a complete NO<sub>x</sub> budget permit application in accordance with the deadlines specified in paragraphs (B)(2) and (B)(3) of rule [3745-14-03](#) of the Administrative Code;

(ii) Submit in a timely manner any supplemental information that the director 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.

(b) The owners and operators of each NO<sub>x</sub> budget unit or source required to have a federally enforceable permit shall have a NO<sub>x</sub> budget permit issued by the director and operate the unit in compliance with such NO<sub>x</sub> budget permit.

(c) The owners and operators of a NO<sub>x</sub> budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO<sub>x</sub> budget permit application, and to have a NO<sub>x</sub> budget permit for such NO<sub>x</sub> budget source.

(2) Monitoring requirements.

(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 rule [3745-14-08](#) of the Administrative Code.

(b) The emissions measurements recorded and reported in accordance with rule [3745-14-08](#) of the Administrative Code shall be used to determine compliance by the unit with the NO<sub>x</sub> budget emissions limitation under paragraph (E)(3) of this rule.

(3) NO<sub>x</sub> allowances.

(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 paragraph (E) of rule [3745-14-06](#) of the Administrative Code, 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 control period from the unit, as determined in accordance with rule [3745-14-08](#) of the Administrative Code, plus any amount necessary to account for actual utilization under paragraph (C)(5) of rule [3745-14-05](#) of the Administrative Code for the control period.

(b) Each ton of NO<sub>x</sub> emitted in excess of the NO<sub>x</sub> budget emissions limitation shall constitute a separate violation of this chapter, the Clean Air Act, and applicable Ohio law.

(c) A NO<sub>x</sub> budget unit shall be subject to the requirements under paragraph (E)(3)(a) of this rule starting on the later of May 31, 2004 or the date on which the unit commences operation.

(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 rules [3745-14-05](#), [3745-14-06](#), 3745-14-07 and 3745-14-09 of the Administrative Code.

(e) A NO<sub>x</sub> allowance shall not be deducted, in order to comply with the requirements under paragraph (E)(3)(a) of this rule, for a control period in a year prior to the year for which the NO<sub>x</sub> allowance was allocated.

(f) A NO<sub>x</sub> allowance allocated by the director under the NO<sub>x</sub> budget trading program is a limited authorization to emit one ton of NO<sub>x</sub> 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 paragraph (C)(2) or (D) of this rule and no provision of law shall be construed to limit the authority of the United States or the state of Ohio to terminate or limit such authorization.

(g) A NO<sub>x</sub> allowance allocated by the director under the NO<sub>x</sub> budget trading program does not constitute a property right.

(h) Upon recordation by the administrator under rules [3745-14-06](#) and [3745-14-07](#) of the Administrative Code, 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.

(4) The owners and operators of a NO<sub>x</sub> budget unit that has excess emissions in any control period shall:

(a) Surrender the NO<sub>x</sub> allowances required for deduction under paragraph (E)(4)(a) of rule [3745-14-06](#) of the Administrative Code; and

(b) Pay any fine, penalty, or assessment or comply with any other remedy imposed under paragraph (E)(4)(c) of rule [3745-14-06](#) of the Administrative Code.

(5) Record keeping and reporting requirements.

(a) Unless otherwise provided, the owners and operators of a NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall keep on site at the source, or at a central location in Ohio for unattended sources, each of the following documents for a period of five years from the date the document is created: (This period may be extended for cause, at any time prior to the end of five years, in writing by the director or the administrator. Records for unattended sources retained at a central location shall be available immediately at the central location upon the request of the director or administrator and within three days following receipt of a written request from the director or administrator.)

(i) 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 paragraph (D) of rule [3745-14-02](#) of the Administrative Code, provided that the certificate and documents shall be retained on site at the source beyond such five-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;

(ii) All emissions monitoring information, in accordance with rule [3745-14-08](#) of the Administrative Code;

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO<sub>x</sub> budget trading program; and

(iv) 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.

(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 rules [3745-14-04](#), [3745-14-08](#), and [3745-14-09](#) of the Administrative Code.

(6) Liability.

(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 paragraph (C)(2) or (D) of this rule shall be subject to enforcement pursuant to applicable state and federal law.

(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 criminal enforcement pursuant to applicable state and federal law.

(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.

(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.

(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.

(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 rule [3745-14-08](#) of the Administrative Code, 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.

(7) 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 paragraph (C)(2) or (D) of this rule 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 the applicable, approved state implementation plan, a federally enforceable permit, or the Clean Air Act.

(F) Computation of time.

(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.

(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.

(3) Unless otherwise stated, if the final day of any time period under the NO<sub>x</sub> budget trading program, except for the control period defined in paragraph (B)(2)(r) of this rule, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

(G) Incorporation by reference. This chapter includes references to certain matter or materials. The text of the incorporated materials is not included in the regulations contained in this chapter. The materials are hereby made a part of the regulations in this chapter. For materials subject to change, only the specific version specified in the regulation are incorporated. Material is incorporated as it exists on the effective date of this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not incorporated unless and until this rule has been amended to specify the new dates.

(1) Availability. The materials incorporated by reference are available as follows:

(a) Clean Air Act as defined in this rule. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the Act as amended in 1990 is also available in electronic format at [www.epa.gov/oar/caa/](http://www.epa.gov/oar/caa/). A copy of the Act is also available for inspection and copying at most public libraries and "The State Library of Ohio."

(b) Code of Federal Regulations. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the CFR is also available in electronic format at [www.access.gpo.gov/nara/cfr/](http://www.access.gpo.gov/nara/cfr/). The CFR compilations are also available for inspection and copying at most Ohio public libraries and "The State Library of Ohio."

(c) Ohio EPA weekly review. Information and copies may be obtained by writing to: "Ohio EPA Legal Department, 122 S. Front Street, Columbus, Ohio, 43125." The full text of the Ohio EPA Weekly Review is also available in electronic format at [www.epa.state.oh.us/legal/pubnote.html/](http://www.epa.state.oh.us/legal/pubnote.html/). The Ohio EPA Weekly Review compilations are also available for inspection and copying at most Ohio public libraries and "The State Library of Ohio."

(d) Federal Registrar. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." Text of the Federal Register is also available in electronic format at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html). The Federal Register is also available for inspection and copying at most Ohio public libraries and "The State Library of Ohio."

(e) American Society for Testing Materials (ASTM). Information and copies may be obtained by writing to: "ASTM International, 100 Bar Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19426-2959." These documents are available for purchase at [www.astm.org](http://www.astm.org). ASTM documents are also generally available at local public libraries and "The State Library of Ohio."

(2) Incorporated materials.

(a) 40 CFR 51.121; "Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen;" 63 FR 57491, Oct. 27, 1998, as amended at 63 FR 71225, Dec. 24, 1998; 64 FR 26305, May 14, 1999; 65 FR 11230, Mar. 2, 2000; 65 FR 56251, Sept. 18, 2000 ; 69 FR 21642, Apr. 21, 2004; 70 FR 25317, May 12, 2005; 70 FR 51597, Aug. 31, 2005, 73 FR 21538, Apr. 22, 2008.

(b) 40 CFR 52.34; “Action on petitions submitted under section 126 relating to emissions of nitrogen oxides;” 64 FR 28318, May 25, 1999, as amended at 64 FR 33961, June 24, 1999; 65 FR 2042, Jan. 13, 2000; 65 FR 2726, Jan. 18, 2000; 69 FR 31505, June 3, 2004.

(c) 40 CFR Part 60; “Standards of Performance for New Stationary Sources”; as published in the July 1, 2008 Code of Federal Regulations.

(d) 40 CFR Part 60, Appendix A; “Test Methods 1 through 29”; as published in the July 1, 2008 Code of Federal Regulations.

(e) 40 CFR Part 72; “Permits Regulation”; as published in the July 1, 2008 Code of Federal Regulations.

(f) 40 CFR 72.2; “Definitions”; as published in the July 1, 2008 Code of Federal Regulations.

(g) 40 CFR 72.6; “Applicability;” 58 FR 3650, Jan. 11, 1993, as amended at 58 FR 15648, Mar. 23, 1993; 62 FR 55475, Oct. 24, 1997; 64 FR 28588, May 26, 1999; 66 FR 12978, Mar. 1, 2001.

(h) 40 CFR Part 75; “Continuous Emission Monitoring”; as published in the July 1, 2008 Code of Federal Regulations.

(i) 40 CFR 75.10; “General operating requirements;” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26519, May 17, 1995; 64 FR 28590, May 26, 1999; 67 FR 40422, June 12, 2002; 70 FR 28678, May 18, 2005.

(j) 40 CFR 75.11; “Specific provisions for monitoring SO<sub>2</sub> emissions (SO<sub>2</sub> and flow monitors);” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26520, 26566, May 17, 1995; 61 FR 59157, Nov. 20, 1996; 63 FR 57499, Oct. 27, 1998; 64 FR 28590, May 26, 1999; 67 FR 40423, June 12, 2002, 73 FR 4342, Jan. 24, 2008.

(k) 40 CFR 75.17; “Specific provisions for monitoring emissions from common, bypass, and multiple stacks for NO<sub>x</sub> emission rate;” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26523, May 17, 1995; 63 FR 57499, Oct. 27, 1998; 64 FR 28592, May 26, 1999; 67 FR 40424, June 12, 2002, 73 FR 4343, Jan. 24, 2008.

(l) 40 CFR 75.19; “Optional SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> emissions calculation for low mass emissions (LME) units;” 63 FR 57500, Oct. 27, 1998, as amended at 64 FR 28592, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40424, 40425, June 12, 2002; 67 FR 53504, Aug. 16, 2002, 73 FR 4344, Jan. 24, 2008.

(m) 40 CFR 75.20; “Initial certification and recertification procedures;” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26524, May 17, 1995; 60 FR 40296, Aug. 8, 1995; 61 FR 59158, Nov. 20, 1996; 63 FR 57506, Oct. 27, 1998; 64 FR 28592, May 26, 1999; 67 FR 40431, June 12, 2002; 70 FR 28678, May 18, 2005, 72 FR 51527, Sept. 7, 2007; 73 FR 4345, Jan. 24, 2008.

(n) 40 CFR 75.21; “Quality assurance and quality control requirements;” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26527, 26566, May 17, 1995; 61 FR 25582, May 22, 1996; 61 FR 59159, Nov. 20, 1996; 64 FR 28599, May 26, 1999; 67 FR 40433, June 12, 2002; 67 FR 53505, Aug. 16, 2002; 70 FR 28679, May 18, 2005, 73 FR 4345, Jan. 24, 2008.

- (o) 40 CFR 75.34; “Units with add-on emission controls;” 60 FR 26567, May 17, 1995, as amended at 61 FR 59160, Nov. 20, 1996; 64 FR 28604, May 26, 1999; 67 FR 40438, June 12, 2002, 73 FR 4348, Jan. 24, 2008.
- (p) 40 CFR 75.61; “Notifications;” 60 FR 26538, May 17, 1995, as amended at 61 FR 25582, May 22, 1996; 61 FR 59162, Nov. 22, 1996; 64 FR 28620, May 26, 1999; 67 FR 40442, 40443, June 12, 2002, 73 FR 4356, Jan. 24, 2008.
- (q) 40 CFR 75.62; “Monitoring plan submittals;” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26539, May 17, 1995; 64 FR 28621, May 26, 1999; 67 FR 40443, June 12, 2002, 73 FR 4356, Jan. 24, 2008.
- (r) 40 CFR 75.64; “Quarterly Reports;” 64 FR 28622, May 26, 1999, as amended at 67 FR 40444, June 12, 2002, 73 FR 4357, Jan. 24, 2008.
- (s) 40 CFR 75.66; “Petitions to the Administrator;” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26540, 26569, May 17, 1995; 61 FR 59162, Nov. 20, 1996; 64 FR 28623, May 26, 1999; 67 FR 40444, June 12, 2002, 73 FR 4358, Jan. 24, 2008.
- (t) 40 CFR 75.70; “NO<sub>x</sub> mass emissions provisions;” 63 FR 57507, Oct. 27, 1998, as amended at 64 FR 28624, May 26, 1999; 67 FR 40444, June 12, 2002.
- (u) 40 CFR 75.71; “Specific provisions for monitoring NO<sub>x</sub> and heat input for the purpose of calculating NO<sub>x</sub> mass emissions;” 63 FR 57508, Oct. 27, 1998, as amended at 64 FR 28624, May 26, 1999; 67 FR 40444, 40445, June 12, 2002; 67 FR 53505, Aug. 16, 2002, 73 FR 4358, Jan. 24, 2008.
- (v) 40 CFR 75.72; “Determination of NO<sub>x</sub> mass emissions;” 63 FR 57507, Oct. 27, 1998, as amended at 67 FR 40445, June 12, 2002, 73 FR 4358, Jan. 24, 2008.
- (w) 40 CFR 75.74; “Annual and ozone season monitoring and reporting requirements;” 63 FR 57507, Oct. 27, 1998, as amended at 64 FR 28627, May 26, 1999; 67 FR 40446, 40447, June 12, 2002; 67 FR 57274, Sept. 9, 2002, 73 FR 4360, Jan. 24, 2008.
- (x) 40 CFR Part 75, Appendix A; “Specifications and Test Procedures”; as published in the July 1, 2008 Code of Federal Regulations.
- (y) 40 CFR Part 75, Appendix B; “Quality Assurance and Quality Control Procedures;” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26546, 26571, May 17, 1995; 61 FR 59165, Nov. 20, 1996; 64 FR 28644, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40456, 40457, June 12, 2002; 67 FR 53505, Aug. 16, 2002; 67 FR 57274, Sept. 9, 2002; 70 FR 28693, May 18, 2005, 72 FR 51528, Sept. 7, 2007; 73 FR 4367, Jan. 24, 2008.
- (z) 40 CFR Part 75, Appendix D; “Optional SO<sub>2</sub> Emissions Data Protocol for Gas-Fired and Oil-Fired Units;” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26548, 26551, May 17, 1995; 61 FR 25585, May 22, 1996; 61 FR 59166, Nov. 20, 1996; 63 FR 57513, Oct. 27, 1998; 64 FR 28652-28663, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40460, 40472, June 12, 2002; 67 FR 53505, Aug. 16, 2002, 73 FR 4369, Jan. 24, 2008.

(aa) 40 CFR Part 75, Appendix E; “Optional NO<sub>x</sub> Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units;” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26551-26553, May 17, 1995; 64 FR 28665, May 26, 1999; 67 FR 40473, 40474, June 12, 2002; 67 FR 53505, Aug. 16, 2002, 73 FR 4372, Jan. 24, 2008.

(bb) 40 CFR Part 75, Appendix F; “Conversion Procedures;” 58 FR 3701, Jan. 11, 1993; Redesignated and amended at 60 FR 26553-26556, 26571, May 17, 1995; 61 FR 25585, May 22, 1996; 61 FR 59166, Nov. 20, 1996; 63 FR 57513, Oct. 27, 1998; 64 FR 28666-28671, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40474, 40475, June 12, 2002; 67 FR 53505, Aug. 16, 2002, 70 FR 28695, May 18, 2005; 73 FR 4372, Jan. 24, 2008.

(cc) 40 CFR Part 75, Subpart D; “Missing Data Substitution Procedures”; as published in the July 1, 2008 Code of Federal Regulations.

(dd) 40 CFR Part 75, Subpart E; “Alternative Monitoring Systems”; as published in the July 1, 2008 Code of Federal regulations.

(ee) 40 CFR Part 75, Subpart F; “Recordkeeping Requirements”; as published in the July 1, 2008 Code of Federal Regulations.

(ff) 40 CFR Part 75, Subpart G; “Reporting Requirements”; as published in the July 1, 2008 Code of Federal Regulations.

(gg) 40 CFR Part 75, Subpart H; “NO<sub>x</sub> mass emissions provisions”; as published in the July 1, 2008 Code of Federal Regulations.

(hh) ASTM D6522-00(2005); “Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers;” approved February 10, 2000, reapproved October 1, 2005.

(ii) Clean Air Act, as contained in 42 USC 7401 to 42 USC 7671q; “Air Pollution Prevention and Control”; published January 3, 2007 in the 2006 edition of the United States Code.

(jj) “Interstate Ozone Transport: Response to Court Decisions on the NO<sub>x</sub> SIP Call, NO<sub>x</sub> SIP Call Technical Amendments, and Section 126 Rules;” 69 FR 21603 to 69 FR 21648, April 21, 2004.

(kk) Section 110 of the Clean Air Act; contained in 42 USC 7410; “State implementation plans for national primary and secondary ambient air quality standards”; published January 3, 2007 in the 2006 Edition of the United States Code.

(ll) Section 126 of the Clean Air Act; contained in 42 USC 7426; “Interstate pollution abatement”; published January 3, 2007 in the 2006 Edition of the United States Code.

(mm) Section 502 of the Clean Air Act; contained in 42 USC 7661a; “Permit programs”; published January 3, 2007 in the 2006 Edition of the United States Code.

(nn) “Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone;” 65 FR 11222 to 65 FR 11231, March 2, 2000.

(oo) Title IV of the Clean Air Act, contained in 42 USC 7651 to 42 USC 7651o; “Acid deposition control”; published January 3, 2007 in the 2006 Edition of the United States Code.

(pp) Title V of the Clean Air Act, contained in 42 USC 7661 to 42 USC 7661f; “Permits”; published January 3, 2007 in the 2006 Edition of the United States Code.

(qq) USEPA Method 1; contained in 40 CFR Part 60, Appendix A; “Sample and velocity traverses for stationary sources”; as published in the July 1, 2008 Code of Federal Regulations.

(rr) USEPA Method 2; contained in 40 CFR Part 60, Appendix A; “Determination of stack gas velocity and volumetric flow rate (Type S pitot tube);” as published in the July 1, 2008 Code of Federal Regulations.

(ss) USEPA Method 3; contained in 40 CFR Part 60, Appendix A; “Gas analysis for the determination of dry molecular weight”; as published in the July 1, 2008 Code of Federal Regulations.

(tt) USEPA Method 4; contained in 40 CFR Part 60, Appendix A;” Determination of moisture content in stack gases”; as published in the July 1, 2008 Code of Federal Regulations.

(uu) USEPA Method 7; contained in 40 CFR Part 60, Appendix A; “Determination of nitrogen oxide emissions from stationary sources”; as published in the July 1, 2008 Code of Federal Regulations.

(vv) USEPA Method 7a; contained in 40 CFR Part 60, Appendix A; “Determination of nitrogen oxide emissions from stationary sources-Ion chromatographic method”; as published in the July 1, 2008 Code of Federal Regulations.

(ww) USEPA Method 7c; contained in 40 CFR Part 60, Appendix A; “Determination of nitrogen oxide emissions from stationary sources-Alkaline-permanganate/colorimetric method”; as published in the July 1, 2008 Code of Federal Regulations.

(xx) USEPA Method 7e; contained in 40 CFR Part 60, Appendix A; “Determination of Nitrogen Oxides Emissions from Stationary Sources (Instrumental Analyzer Procedure)””; as published in the July 1, 2008 Code of Federal Regulations.

Effective: 10/18/2010

R.C. [119.032](#) review dates: 07/19/2013

Promulgated Under: [119.03](#)

Statutory Authority: 3704.03(E)

Rule Amplifies: 3704.03(A), 3704.03(D), 3704.03(E)

Prior Effective Dates: 6/21/94, 7/18/02, 5/25/04, 5/7/05, 7/19/08

## **3745-14-02 The NO<sub>x</sub> Authorized Account Representative.**

(A) Duties of the NO<sub>x</sub> authorized account representative.

(1) Except as provided under paragraph (B) of this rule, 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.

(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.

(3) Upon receipt by the administrator of a complete account certificate of representation under paragraph (D) of this rule, 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, notwithstanding 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 director, the administrator, or a court regarding the source or unit.

(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 paragraph (D) of this rule for a NO<sub>x</sub> authorized account representative of the source and the NO<sub>x</sub> budget units at the source.

(5) NO<sub>x</sub> budget trading program submissions

(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.”

(b) The director and the administrator shall 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 paragraph (A)(5)(a) of this rule.

(B) The alternate NO<sub>x</sub> authorized account representative.

(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.

(2) Upon receipt by the administrator of a complete account certificate of representation under paragraph (D) of this rule, 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.

(3) Except in paragraphs (A)(1), (C) and (D) of this rule and paragraph (B) of rule [3745-14-06](#) of this charter, whenever the term “NO<sub>x</sub> authorized account representative” is used in this part, the term shall be construed to include the alternate NO<sub>x</sub> authorized account representative.

(C) Changing the NO<sub>x</sub> authorized account representative and the alternate NO<sub>x</sub> authorized account representative; changes in the owners and operators.

(1) 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. 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.

(2) 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. 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.

(3) Changes in the owners and operators.

(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 director or the administrator, as if the new owner or operator were included in such list.

(b) Within thirty 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 a revision to the account certificate of representation amending the list of owners and operators to include the change.

(D) Account certificate of representation.

(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:

(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;

(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;

(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;

(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 director, the Administrator, or a court regarding the source or unit."

(e) 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.

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

(E) Objections concerning the NO<sub>x</sub> authorized account representative.

(1) Once a complete account certificate of representation has been submitted and received, the director and the Administrator shall rely on the account certificate of representation unless and until a superseding complete account certificate of representation is received by the Administrator.

(2) Except as provided in paragraphs (C)(1) and (C)(2) of this rule, no objection or other communication submitted to the director or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO<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 director or the administrator under the NO<sub>x</sub> budget trading program.

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

Effective: 7/18/2002

R.C. [119.032](#) review dates: 03/31/2005

Promulgated Under: [119.03](#)

Statutory Authority: 3704.03(E)

Rule Amplifies: 3704.03(A), 3704.03(D), 3704.03(E)

Prior Effective Date: 6/21/1994

### **3745-14-03 The NO<sub>x</sub> Budget Permit.**

(A) General NO<sub>x</sub> budget trading program permit requirements.

(1) For each NO<sub>x</sub> budget source required to have a federally enforceable operating permit, such permit shall include a NO<sub>x</sub> budget permit administered by the director.

(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 operating permit shall be administered in accordance with Chapter 3745-77 of the Administrative Code except as provided otherwise by this rule or rule [3745-14-09](#) of the Administrative Code.

(b) For NO<sub>x</sub> budget sources required to have a non-Title V operating permit, the NO<sub>x</sub> budget portion of the non-Title V operating permit shall be administered in accordance with Chapter 3745-35 of the Administrative Code, except as provided otherwise by this rule or rule [3745-14-09](#) of the Administrative Code.

(2) Each NO<sub>x</sub> budget permit (including a draft or proposed NO<sub>x</sub> budget permit, if applicable) shall contain all applicable NO<sub>x</sub> budget trading program requirements and shall be a complete and segregable portion of the permit required under paragraph (A)(1) of this rule.

(B) Submission of NO<sub>x</sub> budget permit applications.

(1) The NO<sub>x</sub> authorized account representative of any NO<sub>x</sub> budget source required to have a federally enforceable operating permit shall submit to the director a complete NO<sub>x</sub> budget permit application by the applicable deadline in paragraph (B)(2) of this rule.

(2) Application time.

(a) For NO<sub>x</sub> budget sources required to have a Title V operating permit:

(i) For any source, with one or more NO<sub>x</sub> budget units that commence operation before January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application covering such NO<sub>x</sub> budget units to the director before May 1, 2003;

(ii) For any source, with one or more NO<sub>x</sub> budget units that commence 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 covering such NO<sub>x</sub> budget unit to the director at least twelve months before the later of May 1, 2004 or the date on which the NO<sub>x</sub> budget unit commences operation.

(b) For NO<sub>x</sub> budget sources required to have a non-Title V operating permit:

(i) For any source, with one or more NO<sub>x</sub> budget units that commence operation before January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application covering such NO<sub>x</sub> budget units to the director before May 1, 2003;

(ii) For any source, with any NO<sub>x</sub> budget unit 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 covering such NO<sub>x</sub> budget unit to the director at least twelve months before the later of May 1, 2004 or the date on which the NO<sub>x</sub> budget unit commences operation.

(3) Duty to reapply.

(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 renewal application for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> budget units at the source in accordance with Chapter 3745-77 of the Administrative Code.

(b) For a NO<sub>x</sub> budget source required to have a non-Title V operating permit, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> budget units at the source in accordance with rule [3745-35-02](#) of the Administrative Code.

(C) Information requirements for NO<sub>x</sub> budget permit applications.

(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 director:

(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 United States energy information administration, or a facility code assigned to the source by the administrator;

(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 paragraph (C)(1) of rule [3745-14-01](#) or rule [3745-14-09](#) of the Administrative Code;

(c) The standard requirements under paragraph (E) of rule [3745-14-01](#) of the Administrative Code; and

(d) For each NO<sub>x</sub> budget opt-in unit at the NO<sub>x</sub> budget source, the following certification statements by the NO<sub>x</sub> authorized account representative:

(i) "I certify that each unit for which this permit application is submitted under rule [3745-14-09](#) of the Administrative Code is not a NO<sub>x</sub> budget unit under paragraph (C)(1) of rule [3745-14-01](#) of the Administrative Code and is not covered by an exemption under paragraph (C)(2) or (D) of rule [3745-14-01](#) of the Administrative Code that is in effect."

(ii) If the application is for an initial NO<sub>x</sub> budget opt-in permit, "I certify that each unit for which this permit application is submitted under rule [3745-14-09](#) of the Administrative Code is currently operating, as that term is defined under paragraph (B)(2) of rule [3745-14-01](#) of the Administrative Code."

(D) NO<sub>x</sub> budget permit contents.

(1) Each NO<sub>x</sub> budget permit (including any draft or proposed NO<sub>x</sub> budget permit, if applicable) shall contain, in a format prescribed by the director, all elements required for a complete NO<sub>x</sub> budget permit application under paragraph (C) of this rule.

(2) Each NO<sub>x</sub> budget permit is deemed to incorporate automatically the definitions of terms under paragraph (B) of rule [3745-14-01](#) of the Administrative Code and, upon recordation by the Administrator, in accordance with rules [3745-14-06](#) and [3745-14-07](#) of the Administrative Code, 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.

(E) NO<sub>x</sub> budget permit revisions.

(1) For a NO<sub>x</sub> budget source with a Title V operating permit, except as provided in paragraph (D)(2) of this rule, the director shall revise the NO<sub>x</sub> budget permit, as necessary, in accordance with rule [3745-77-08](#) of the Administrative Code.

(2) For a NO<sub>x</sub> budget source with a non-Title V operating permit, except as provided in paragraph (D)(2) of this rule, the director shall revise the NO<sub>x</sub> budget permit, as necessary, in accordance with rule [3745-35-02](#) of the Administrative Code.

Effective: 05/25/2004

R.C. [119.032](#) review dates: 03/31/2005

Promulgated Under: [119.03](#)

Statutory Authority: 3704.03(E)

Rule Amplifies: 3704.03(A), 3704.03(D), 3704.03(E)

Prior Effective Dates: 6/21/94, 7/18/02

## **3745-14-04 Compliance Certification.**

(A) The compliance certification report.

(1) For each control period 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 director and the administrator, by November 30 of that year, a compliance certification report for each source covering all such units.

(2) The NO<sub>x</sub> authorized account representative shall include in the compliance certification report under paragraph (A)(1) of this rule 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 control period covered by the report:

(a) identification of each NO<sub>x</sub> budget unit;

(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 paragraph (E) of rule [3745-14-06](#) of this chapter for the control period;

(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 rule [3745-14-08](#) of this chapter, the percentage of allowances that is to be deducted from each unit's compliance account under paragraph (E)(5) of rule [3745-14-06](#) of this chapter; and

(d) the compliance certification under paragraph (A)(3) of this rule.

(3) In the compliance certification report under paragraph (A)(1) of this rule, 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 all the following:

(a) whether the unit was operated in compliance with the NO<sub>x</sub> budget emissions limitation;

(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 rule [3745-14-08](#) of this chapter;

(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 rule [3745-14-08](#) of this chapter, and 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;

(d) whether the facts that form the basis for certification under rule [3745-14-08](#) of this chapter 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 rule [3745-14-08](#) of this chapter, if any, have changed.

(e) If a change is required to be reported under paragraph (A)(3)(d) of this rule, 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.

(B) Director's or Administrator's action on compliance certifications.

(1) The director or 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.

(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 paragraph (B)(1) of this rule.

Effective: 7/18/2002

R.C. [119.032](#) review dates: 03/31/2005

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Prior Effective Date: 6/21/94

## **3745-14-05 NO<sub>x</sub> Allowance Allocations.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the "Incorporation by Reference" section at the end of rule 3745-14-01 of the Administrative Code.]

(A) The state trading program budget allocated by the director under paragraph (C) of this rule for a control period shall equal the total number of tons of NO<sub>x</sub> emissions apportioned to the NO<sub>x</sub> budget units in Ohio for the control period, as determined by the applicable, approved state implementation plan, less the sum of the NO<sub>x</sub> emission limitations (in tons) for each unit exempt under paragraph (C)(2) of rule 3745-14-01 of the Administrative Code that is not allocated any NO<sub>x</sub> allowances under paragraph (C)(2) or (C)(3) of this rule for the control period and whose NO<sub>x</sub> emission limitation is not included in the current calculations under paragraph (C)(4)(e)(ii)(b) of this rule for the control period. (Ohio's trading program budget is 49,460 NO<sub>x</sub> allowances: 45,462 for units under paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code, and 4,028 for units under paragraph (C)(1)(b) of rule 3745-14-01 of the Administrative Code.)

(B) Timing requirements for NO<sub>x</sub> allowance allocations.

(1) The NO<sub>x</sub> allowance allocations, determined in accordance with paragraphs (C)(1) to (C)(3) of this rule, for the control periods in 2004 through 2007 are set forth in appendices A and B of this rule.

(2) By April 1, 2005, the director shall submit to the administrator the NO<sub>x</sub> allowance allocations, determined in accordance with paragraphs (C)(1) to (C)(3) of this rule, for the control periods in 2008 through 2012.

(3) By April 1, 2010, and by April 1 of 2015, and thereafter by April first of the year that is five years after the last year for which NO<sub>x</sub> allowance allocations are determined, the director shall submit to the administrator the NO<sub>x</sub> allowance allocations determined in accordance with paragraphs (C)(1) to (C)(3) of this rule, for the control periods in the years that are three, four, five, six, and seven years after the applicable deadline under this paragraph.

(4) By April 1, 2004 and April first of each year thereafter, the director shall submit to the administrator the NO<sub>x</sub> allowance allocations determined in accordance with paragraph (C)(4) of this rule, for the control period in the year of the applicable deadline under this paragraph.

(5) If the director fails to submit to the administrator the NO<sub>x</sub> allowance allocations in accordance with paragraphs (B)(1) to (B)(3) of this rule, the administrator shall allocate, for the applicable control period, the same number of NO<sub>x</sub> allowances to NO<sub>x</sub> budget units as were allocated to the NO<sub>x</sub> budget units for the preceding control period.

(6) The director shall make available to the public each determination of NO<sub>x</sub> allowance allocations under this rule according to the following procedures:

(a) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located and in the "Ohio EPA Weekly Review"; to persons on a mailing list

developed by the director, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

(b) The notice shall identify the names and addresses of the affected facilities; the NO<sub>x</sub> allowances to be assigned to each NO<sub>x</sub> budget unit at each facility; the name and address of the director; and the name, address, and telephone number of a person from whom interested persons may obtain additional information;

(c) The director shall provide at least thirty days for public comment;

(d) The director shall keep a record of the commenters and also of the issues raised during the public participation process and such records shall be available to the public.

(C) NO<sub>x</sub> allowance allocations.

(1) Heat inputs used to calculate NO<sub>x</sub> allowance allocations.

(a) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations for each NO<sub>x</sub> budget unit under paragraph (C)(1) of rule 3745-14-01 of the Administrative Code shall be:

(i) For a NO<sub>x</sub> allowance allocation under paragraph (B)(1) of this rule:

(a) For a unit under paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code, the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1998; or

(b) For a unit under paragraph (C)(1)(b) of rule 3745-14-01 of the Administrative Code, the control period in 1995 or, if the director determines that reasonably reliable data are available for control periods in 1996 through 1998, the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1998.

(ii) For a NO<sub>x</sub> allowance allocation under paragraphs (B)(2) and (B)(3) of this rule, the average of the unit's two highest control period heat input in the years that are four, five, six, seven, and eight years before the first year for which the allocation is being calculated;

(iii) For a NO<sub>x</sub> allowance allocation under paragraphs (B)(2) and (B)(3) of this rule, if a NO<sub>x</sub> budget unit does not have five years of control period heat input, the following shall apply:

(a) For a NO<sub>x</sub> budget unit with more than two years of control period heat input data the average of the two highest control period heat input;

(b) For a NO<sub>x</sub> budget unit with only two years of control period heat input data, the average of the control period heat input for those two years; or

(c) For a NO<sub>x</sub> budget unit with one year of control period heat input data, the heat input for that control period.

(b) The unit's heat input for the control period in each year specified in paragraph (C)(1)(a) of this rule shall be determined in accordance with 40 CFR Part 75. Notwithstanding the first sentence of this paragraph (C)(1)(b) of this rule:

(i) For a NO<sub>x</sub> allowance allocation under paragraph (B) of this rule, such heat input shall be determined using the best available data reported to the director for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the control period;

(ii) For a NO<sub>x</sub> allowance allocation under paragraph (B)(2) or (B)(3) of this rule for a unit exempt under paragraph (C)(2) of rule 3745-14-01 of the Administrative Code, such heat input shall be treated as zero if the unit is exempt under paragraph (C)(2) of rule 3745-14-01 of the Administrative Code during the control period.

(2) For each group of control periods specified in paragraphs (B)(1) to (B)(3) of this rule, the director shall allocate, to all NO<sub>x</sub> budget units under paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code that commenced operation before May 1, 1997 for allocations under paragraph (B)(1) of this rule; May 1, 2003 for allocations under paragraph (B)(2) of this rule; and May first of the year five years before the first year for which the allocation under paragraph (B)(3) of this rule is being calculated, a total number of NO<sub>x</sub> allowances equal to ninety five per cent in 2004 and 2005, and ninety three per cent in all subsequent years, of the portion of the state trading program budget under paragraph (A) of this rule covering such units. The director shall allocate allowances in accordance with the following procedures:

(a) The director shall allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> budget unit under paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code for each control period in an amount equaling the lesser of 0.15 pound per mmBtu or the unit's most stringent state or federal NO<sub>x</sub> emission limitation multiplied by the heat input determined under paragraph (C)(1) of this rule, divided by 2000 pounds per ton, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(b) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> budget units under paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code for a control period under paragraph (C)(2)(a) of this rule does not equal ninety-five per cent in 2004 and 2005, and ninety three per cent in all subsequent years, of the state trading program budget under paragraph (A) of this rule covering such units, the director shall adjust the total number of NO<sub>x</sub> allowances allocated to all such NO<sub>x</sub> budget units for the control period under paragraph (C)(2)(a) of this rule so that the total number of NO<sub>x</sub> allowances allocated equals ninety five per cent in 2004 and 2005, and ninety three per cent in all subsequent years, of such portion of the state trading program budget. This adjustment shall be made by multiplying each unit's allocation by ninety five per cent in 2004 and 2005, and ninety three per cent in all subsequent years, of such portion of the state trading program budget under paragraph (A) of this rule, dividing by the total number of NO<sub>x</sub> allowances allocated under paragraph (C)(2)(a) of this rule for the control period, and rounding to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(3) For each group of control periods under paragraphs (B)(1) to (B)(3) of this rule, the director shall allocate to all NO<sub>x</sub> budget units under paragraph (C)(1)(b) of rule 3745-14-01 of the Administrative Code that commenced operation before May 1, 1997 for allocations under paragraph (B)(1) of this rule; May 1, 2003 for allocations under paragraph (B)(2) of this rule, and May first of the year five years before the first year for which the allocation under paragraph (B)(3) of this rule is being calculated, a total number of NO<sub>x</sub> allowances equal to ninety-five per cent of portion of the state trading program budget under paragraph (A) of this rule covering such units. The director shall allocate allowances in accordance with the following procedures:

(a) The director shall allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> budget unit under paragraph (C)(1)(b) of rule 3745-14-01 of the Administrative Code for each control period in an amount equaling the lesser of 0.17 pound per mmBtu or the unit's most stringent state or federal NO<sub>x</sub> emission limitation multiplied by the heat input determined under paragraph (C)(1) of this rule, divided by 2000 pounds per ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(b) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> budget units under paragraph (C)(1)(b) of rule 3745-14-01 of the Administrative Code for a control period under paragraph (C)(3)(a) of this rule does not equal ninety-five per cent of the portion of the state

trading program budget under paragraph (A) of this rule covering such units, the director shall adjust the total number of NO<sub>x</sub> allowances allocated to all such NO<sub>x</sub> budget units for the control period under paragraph (C)(3)(a) of this rule so that the total number of NO<sub>x</sub> allowances allocated equals ninety-five per cent of the portion of the state trading program budget under paragraph (A) of this rule covering such units. This adjustment shall be made by multiplying each unit's allocation by ninety-five per cent of the portion of the state trading program budget under paragraph (A) of this rule covering such units, dividing by the total number of NO<sub>x</sub> allowances allocated under paragraph (C)(3)(a) of this rule, and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate.

(c) The director shall allocate NO<sub>x</sub> allowances to emissions unit B002 at WCI steel (premise number 0278000463) for each control period in an amount equaling 0.10 lb/mmBtu multiplied by the heat input determined under paragraph (C)(1) of this rule, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(4) For each control period under paragraph (B)(4) of this rule, the director shall allocate NO<sub>x</sub> allowances to NO<sub>x</sub> budget units under paragraph (C)(1) of rule 3745-14-01 of the Administrative Code that commence operation, or are projected to commence operation, on or after the following dates: May 1, 1997, for control periods under paragraph (B)(1) of this rule; May 1, 2003, for control periods under paragraph (B)(2) of this rule; and May first of the year five years before the beginning of the group of five years that includes the control period, for control periods under paragraph (B)(3) of this rule. The director shall make the allocations under this paragraph (C)(4) of this rule in accordance with the following procedures:

(a) The director shall establish a new source set-aside for each control period. Each new source set-aside shall be allocated NO<sub>x</sub> allowances equal to five per cent of the total state trading program budget under paragraph (A) of this rule, rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(b) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit specified in paragraph (C)(4) of this rule may submit to the director a request, in a format specified by the director, to be allocated NO<sub>x</sub> allowances for the control period. The NO<sub>x</sub> allowance allocation request shall be submitted to the director on or after the date on which the director issues a permit to construct the unit and by January first before the control period for which the NO<sub>x</sub> allowances are requested.

(c) In a NO<sub>x</sub> allowance allocation request under paragraph (C)(4)(b) of this rule, the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit under paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code may request for a control period NO<sub>x</sub> allowances in an amount that does not exceed the lesser of:

(i) 0.15 pound per mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of three thousand six hundred seventy-two hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 pounds per ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate; or

(ii) The unit's most stringent state or federal NO<sub>x</sub> emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of three thousand six hundred seventy-two hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided

by 2,000 pounds per ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(d) In a NO<sub>x</sub> allowance allocation request under paragraph (C)(4)(b) of this rule, the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit under paragraph (C)(1)(b) of rule 3745-14-01 of the Administrative Code may request for the control period NO<sub>x</sub> allowances in an amount that does not exceed the lesser of:

(i) 0.17 pound per mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of three thousand six hundred seventy two hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 pounds per ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate; or

(ii) The unit's most stringent state or federal NO<sub>x</sub> emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of three thousand six hundred seventy-two hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 pounds per ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(e) The director shall review each NO<sub>x</sub> allowance allocation request submitted in accordance with paragraph (C)(4)(b) of this rule and shall allocate NO<sub>x</sub> allowances pursuant to such request as follows:

(i) Upon receipt of the NO<sub>x</sub> allowance allocation request, the director shall make any necessary adjustments to the request to ensure that the requirements of paragraphs (C)(4), (C)(4)(b), (C)(4)(c), and (C)(4)(d) of this rule are met.

(ii) The director shall determine the following amounts:

(a) The sum of the NO<sub>x</sub> allowances requested (as adjusted under paragraph (C)(4)(e)(i) of this rule) in all NO<sub>x</sub> allowance allocation requests under paragraph (C)(4)(b) of this rule for the control period; and

(b) For units exempt under paragraph (C)(2) of rule 3745-14-01 of the Administrative Code that commenced operation, or are projected to commence operation, on or after May 1, 1997, for control periods under paragraph (B)(1) of this rule; May 1, 2003, for control periods under paragraph (B)(2) of this rule; and May first of the year five years before beginning of the group of five years that includes the control period for control periods under paragraph (B)(3) of this rule, the sum of the NO<sub>x</sub> emission limitations (in tons of NO<sub>x</sub>) on which each unit's exemption under paragraph (C)(2) of rule 3745-14-01 of the Administrative Code is based.

(iii) If the number of NO<sub>x</sub> allowances in the new source set-aside, under paragraph (C)(4)(a) of this rule, for the control period less the amount under paragraph (C)(4)(e)(ii)(b) of this rule is not less than the amount determined under paragraph (C)(4)(e)(ii)(a) of this rule, the director shall allocate the amount of the NO<sub>x</sub> allowances requested (as adjusted under paragraph (C)(4)(e)(i) of this rule) to the NO<sub>x</sub> budget unit for which the allocation request was submitted.

(iv) If the number of NO<sub>x</sub> allowances in the new source set-aside, under paragraph (C)(4)(a) of this rule, for the control period less the amount under paragraph (C)(4)(e)(ii)(b) of this rule is less than the amount determined under paragraph (C)(4)(e)(ii)(a) of this rule, the director shall 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 (C)(4)(e)(i) of this rule) multiplied by the number of NO<sub>x</sub> allowances in the new source set-aside for the control period less the amount determined under paragraph (C)(4)(e)(ii)(b) of this rule, divided by the amount determined under

paragraph (C)(4)(e)(ii)(a) of this rule, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(f) By April first of the year for which the request for allocations from the new unit allocation set-aside was made under paragraph (C)(4)(b) of this rule, the director shall take appropriate action under paragraph (C)(4)(e) of this rule and notify the NO<sub>x</sub> authorized account representative that submitted the request and the administrator of the number of NO<sub>x</sub> allowances allocated for the control period to the NO<sub>x</sub> budget unit.

(5) For a NO<sub>x</sub> budget unit that is allocated NO<sub>x</sub> allowances under paragraph (C)(4) of this rule for a control period, the administrator shall deduct NO<sub>x</sub> allowances under paragraph (E)(2) or (E)(5) of rule 3745-14-06 of the Administrative Code to account for the actual utilization of the unit during the control period. The administrator shall calculate the number of NO<sub>x</sub> allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NO<sub>x</sub> allowance 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:

(a) NO<sub>x</sub> allowances deducted for actual utilization for units under paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code equals the unit's NO<sub>x</sub> allowances allocated for the control period minus the unit's actual control period utilization multiplied by the lesser of 0.15 pound per mmBtu or the unit's most stringent state or federal NO<sub>x</sub> emission limitation, divided by 2,000 pounds per ton rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(b) NO<sub>x</sub> allowances deducted for actual utilization for units under paragraph (C)(1)(b) of rule 3745-14-01 of the Administrative Code equals the unit's NO<sub>x</sub> allowances allocated for the control period minus the unit's actual control period utilization multiplied by the lesser of 0.17 pound per mmBtu or the unit's most stringent state or federal NO<sub>x</sub> emission limitation, divided by 2,000 pounds per ton rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

Where:

“Unit's NO<sub>x</sub> allowances allocated for control period” is the number of NO<sub>x</sub> allowances allocated to the unit for the control period under paragraph (C)(4) of this rule; and

“Unit's actual control period utilization” is the utilization (in mmBtu), as defined in paragraph (B) of rule 3745-14-01 of the Administrative Code, of the unit during the control period.

(6) After making the deductions for compliance under paragraph (E)(2), (E)(5), or (E)(6) of rule 3745-14-06 of the Administrative Code for a control period, the administrator shall notify the director whether any NO<sub>x</sub> allowances remain in the new unit allocation set-aside for the control period. The director shall allocate any such NO<sub>x</sub> allowances to the NO<sub>x</sub> budget units in the state using the following formula and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate:

$$\text{(Unit's share of NO}_x\text{ allowances remaining in the new unit allocation set-aside)} = \frac{\text{(total NO}_x\text{ allowances remaining in new unit allocation set-aside)} \times \text{(unit's NO}_x\text{ allowance allocation)}}{\text{(state trading program budget excluding the new unit allocation set-aside)}}$$

Where the:

“Total NO<sub>x</sub> allowances remaining in new unit allocation set-aside” is the total number of NO<sub>x</sub> allowances remaining in the new unit allocation set-aside for the control period;

“Unit’s NO<sub>x</sub> allowance allocation” is the number of NO<sub>x</sub> allowances allocated under paragraph (C)(2) or (C)(3) of this rule to the unit for the control period to which the new unit allocation set-aside applies; and

“State trading program budget excluding new unit allocation set-aside” is the state’s trading program budget under paragraph (A) of this rule for the control period to which the new unit allocation set-aside applies multiplied by ninety-five per cent rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(7) Notwithstanding paragraph (C)(6) of this rule, the director shall not allocate the total amount of NO<sub>x</sub> allowances remaining in the new unit allocation set-aside from the 2005 control period to existing NO<sub>x</sub> budget units in the state. Of the total of two thousand two hundred twenty-seven new unit set aside allowances from the 2005 control period that are available for allocation to existing NO<sub>x</sub> budget units and withhold two hundred forty allowances for permanent retirement. (This reduction is necessary to off-set emission increases associated with termination of the automobile inspection maintenance program (“E-Check”) in the Cincinnati and Dayton areas).

(8) The director shall establish an allocation set-aside for each control period beginning in 2006 for energy efficiency/renewable energy projects. Each energy efficiency/renewable energy project set-aside shall be allocated NO<sub>x</sub> allowances equal to one per cent of the tons of NO<sub>x</sub> emissions in the state trading program budget under paragraph (A) of this rule as applicable to units identified by paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(a) Applicants may submit a proposal to the director for an energy efficiency/renewable energy project and request allocations from the energy efficiency/renewable energy project set-aside for energy reductions obtained as a result of the project. The director shall review proposals based on criteria determined by the director, and notify applicants of approved projects. Proposals must contain the following:

- (i) A detailed description of the project; and
- (ii) An estimate of the number of allocations that will be requested.

(b) To receive allocations for the energy efficiency/renewable energy projects approved by the director, the applicant must submit a completed project report that verifies that the project was completed as proposed and that proposed energy reductions were obtained.

(c) Upon verification of the project’s success, the director shall award the required allocations to the applicant.

(d) Allocations shall be awarded on an annual basis and for no more than five consecutive years for each approved energy efficiency/renewable energy project.

(9) The director shall establish an allocation set-aside for each control period beginning in 2006 for innovative technology projects. Each innovative technology project set-aside shall be allocated NO<sub>x</sub> allowances equal to one per cent of the tons of NO<sub>x</sub> emissions in the state trading program budget under paragraph (A) of this rule as applicable to units identified by paragraph

(C)(1)(a) of rule 3745-14-01 of the Administrative Code, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(a) Applicants may submit a proposal to the director for an innovative technology project and request allocations from the innovative technology project set-aside for NO<sub>x</sub> reductions or energy reductions obtained. The director shall review proposals based on criteria determined by the director, and notify applicants of approved projects. Proposals must contain the following:

- (i) A detailed description of the project; and
- (ii) An estimate of the number of allocations that will be requested.

(b) To receive allocations for the innovative technology projects approved by the director, the applicant shall submit a completed project report that verifies that the project was completed as proposed and that proposed NO<sub>x</sub> reductions or energy reductions were obtained.

(c) Upon verification of the project's success, the director shall award the required allocations to the applicant.

(d) Allocations shall be awarded on an annual basis and for no more than five consecutive years for each approved innovative technology project.

(10) Allowances remaining at the end of each year in the energy efficiency/renewable energy allocation set-aside or in the innovative technology project allocation set-aside, shall be allocated to NO<sub>x</sub> budget units under paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code in the following year, prorated on the basis of each unit's previous year allocations.

(D) Early reduction credit. The owner or operator of a NO<sub>x</sub> budget unit may request early reduction credit for NO<sub>x</sub> emission rate reductions made in the unit during the 2001, 2002, or 2003 control periods. The director may allocate NO<sub>x</sub> allowances, to be used in 2004 and 2005, to the unit in accordance with the following requirements:

(1) Each NO<sub>x</sub> budget unit for which the owner or operator requests any early reduction credit under this rule shall monitor and report NO<sub>x</sub> emissions in accordance with rule 3745-14-08 of the Administrative Code starting in the 2000 control period and for each control period for which such early reduction credit is requested. The unit's per cent monitor data availability shall be not less than ninety per cent during the 2000 control period, and the unit shall be in compliance with any applicable state or federal emission control requirements during 2000 through 2003.

(2) The NO<sub>x</sub> emission rate and heat input under paragraphs (D)(3) and (D)(4) of this rule shall be determined in accordance with rule 3745-14-08 of the Administrative Code.

(3) Each NO<sub>x</sub> budget unit for which the owner or operator requests early reduction credit under paragraph (D)(4) of this rule shall reduce its NO<sub>x</sub> emission rate for each control period for which early reduction credit is requested to less than eighty per cent of the unit's NO<sub>x</sub> emission rate in the 2000 control period. Early reduction credits shall not be earned for NO<sub>x</sub> reductions required under the state implementation plan or otherwise required under any provision of the Clean Air Act.

(4) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that meets the requirements of paragraphs (D)(1) and (D)(3) of this rule may submit to the director a request for early

reduction credit based on NO<sub>x</sub> emission rate reductions for the unit in any or all of the control periods in 2001, 2002, or 2003.

(a) The NO<sub>x</sub> authorized account representative may request early reduction credit for NO<sub>x</sub> reductions made in the 2001, 2002, or 2003 control periods in the amount equal to the following: the unit's heat input for such control period multiplied by the difference between the unit's NO<sub>x</sub> emission rate (in pound per mmBtu) during the 2000 control period and the NO<sub>x</sub> emission rate (in pound per mmBtu) for each control period for which early reduction credits are requested, divided by 2,000 pounds per ton and rounded to the nearest whole number of tons as appropriate.

(b) Requests for early reduction credit for reductions made in 2001 and 2002 shall be submitted, in a format specified by the director, by February 1, 2003; and for reductions made in 2003, by February 1, 2004.

(5) The director shall allocate NO<sub>x</sub> allowances, to NO<sub>x</sub> budget units meeting the requirements of paragraphs (D)(1) to (D)(3) of this rule and covered by early reduction credit requests meeting the requirements of paragraph (D)(4)(b) of this rule, in accordance with the following procedures:

(a) Upon receipt of such early reduction credit requests, the director shall make any necessary adjustments to the request to ensure that the amount of the early reduction credit requested meets the requirement of paragraphs (D)(1) to (D)(4) of this rule.

(b) If the combined number of early reduction credit in all accepted early reduction credit requests for 2001 and 2002 is not greater than eleven thousand one hundred fifty-one, and the early reduction credit in all accepted early reduction credit requests for 2003 is not greater than eleven thousand one hundred fifty, the director shall allocate to each NO<sub>x</sub> budget unit covered by such accepted requests one allowance for each early reduction credit requested.

(c) If the combined number of early reduction credit in all accepted early reduction credit requests for 2001 and 2002 is greater than eleven thousand one hundred fifty-one, or the early reduction credit in all accepted early reduction credit requests for 2003 is greater than eleven thousand one hundred fifty, the director shall allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> budget unit covered by such requests according to the following formula and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate:

(unit's allocated early reduction credit) = (unit's adjusted early reduction credit) x (A) / (total adjusted early reduction credit requested by all units)

Where:

A = 11,151 for early reduction credit request made for early reductions made in 2001 and 2002; and 11,150 for early reduction credit requests for early reductions made in 2003;

“Unit's adjusted early reduction credit” means the number of early reduction credit for the unit for the combined years 2001 and 2002, or 2003 in accepted early reduction credit requests, as adjusted under paragraph (D)(5)(a) of this rule;

“Total adjusted early reduction credit requested by all units” means the number of early reduction credit for all units for the combined years 2001 and 2002, or 2003 in accepted early reduction credit requests, as adjusted under paragraph (D)(5)(a) of this rule.

(6) The director shall notify the NO<sub>x</sub> authorized account representatives who requested early reduction credit according to paragraph (D)(4) of this rule the amount of early reduction credit the administrator will record as NO<sub>x</sub> allowances for early reductions made during the control periods in 2001, 2002, and 2003 by the following dates:

(a) April 1, 2003, for NO<sub>x</sub> emission rate reductions made during the 2001 and 2002 control periods; and

(b) April 1, 2004, for NO<sub>x</sub> emission rate reductions made during the 2003 control period.

(7) The director shall submit to the administrator the NO<sub>x</sub> allowance allocations determined in accordance with paragraph (D)(5) of this rule by the following dates:

(a) By May 1, 2003, for NO<sub>x</sub> emission reductions made during the 2001 and 2002 control periods;

(b) By May 1, 2004, for NO<sub>x</sub> emission reductions made during the 2003 control period.

(8) NO<sub>x</sub> allowances recorded under paragraph (D)(7) of this rule may be deducted for compliance under paragraph (E) of rule 3745-14-06 of the Administrative Code for the control periods in 2004 and 2005. Notwithstanding paragraph (F)(1)(a) of rule 3745-14-06 of the Administrative Code, the administrator shall deduct, as retired, any NO<sub>x</sub> allowance that is recorded under paragraph (D)(7) of this rule and is not deducted for compliance in accordance with paragraph (E) of rule 3745-14-06 of the Administrative Code for the control periods in 2004 and 2005.

(9) NO<sub>x</sub> allowances recorded under paragraph (D)(7) of this rule are treated as banked allowances in 2004 and 2005 for the purposes of paragraph (F)(1)(b) of rule 3745-14-06 of the Administrative Code.

(10) The total number of NO<sub>x</sub> allowances available for early reduction credit shall be twenty two thousand three hundred one. Of this amount, eleven thousand one hundred fifty-one NO<sub>x</sub> allowances shall be available as early reduction credit for reductions made in the control periods in 2001 and 2002, and eleven thousand one hundred fifty NO<sub>x</sub> allowances shall be available as early reduction credit for reductions made in the control period in 2003. NO<sub>x</sub> allowances available for reductions made in the 2001 and 2002 control periods that are not allocated by the director in accordance with paragraph (D)(5) of this rule shall be available for reductions made during the control period in 2003. NO<sub>x</sub> allowances available for reductions made in the 2001, 2002 and 2003 control periods that are not allocated or recorded by the director in accordance with paragraph (D)(5) of this rule shall be retired.

## Appendix B

Effective: 07/17/2006

R.C. [119.032](#) review dates: 03/31/2005

Promulgated Under: [119.03](#)

Statutory Authority: [3704.03\(E\)](#)

Rule Amplifies: [3704.03\(A\)](#), [3704.03\(D\)](#), [3704.03\(E\)](#)

Prior Effective Dates: 6/21/1994, 7/18/2002, 5/25/2004, 5/7/2005, 4/24/2006(emer.)

## **3745-14-06 The NO<sub>x</sub> Allowance Tracking System.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the “Incorporation by Reference” section at the end of rule [3745-14-01](#) of the Administrative Code.]

### (A) NO<sub>x</sub> allowance tracking system accounts.

(1) Consistent with paragraph (B)(1) of this rule, the administrator shall establish one compliance account for each NO<sub>x</sub> budget unit and one overdraft account for each source with two or more NO<sub>x</sub> budget units. Allocations of NO<sub>x</sub> allowances pursuant to rule [3745-14-05](#) or [3745-14-09](#) of the Administrative Code and deductions or transfers of NO<sub>x</sub> allowances pursuant to paragraphs (E) and (G) of this rule, paragraph (B) of rule [3745-14-04](#), and rules [3745-14-07](#) and [3745-14-09](#) of the Administrative Code shall be recorded in the compliance accounts or overdraft accounts in accordance with this rule.

(2) Consistent with paragraph (B)(2) of this rule, the administrator shall establish, upon request, a general account for any person. Transfers of allowances pursuant to rule [3745-14-07](#) of the Administrative Code shall be recorded in the general account in accordance with this rule.

### (B) Establishment of accounts.

(1) Upon receipt of a complete account certificate of representation, the administrator shall establish:

(a) A compliance account for each NO<sub>x</sub> budget unit for which the account certificate of representation was submitted; and

(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.

### (2) General accounts.

(a) Any person may apply to open a general account for the purpose of holding and transferring allowances. 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. 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:

(i) 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;

(ii) At the option of the NO<sub>x</sub> authorized account representative, organization name, and type of organization;

(iii) 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 allowances held in the general account;

(iv) 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.”

(v) 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.

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

(b) Upon receipt by the administrator of a complete application for a general account under paragraph (B)(2)(a) of this rule:

(i) The administrator shall establish a general account for the person or persons for whom the application is submitted.

(ii) 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.

(iii) Any representation, action, inaction, or submission by an 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.

(iv) 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:

“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.”

(v) The administrator shall accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (B)(2)(b)(iv) of this rule.

(c) Change of NO<sub>x</sub> authorized account representative or alternate NO<sub>x</sub> authorized account representative.

(i) 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 paragraph (B)(2)(b) of this rule. 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 allowances in the general account.

(ii) 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 paragraph (B)(2)(b) of this rule. 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 allowances in the general account.

(d) Change in owners.

(i) 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.

(ii) Within thirty 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.

(e) Administrator's reliance on general account application.

(i) Once a complete application for a general account has been submitted and received, the administrator shall rely on the application unless and until a superseding complete application for a general account is received by the administrator.

(ii) Except as provided in paragraph (B)(2)(d) of this rule, 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.

(iii) The administrator shall 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.

(3) The administrator shall assign a unique identifying number to each account established under paragraph (B)(1) or (B)(2) of this rule.

(C) NO<sub>x</sub> allowance tracking system responsibilities of the NO<sub>x</sub> authorized account representative.

(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.

(2) The administrator shall assign a unique identifying number to each NO<sub>x</sub> authorized account representative.

(D) Recording NO<sub>x</sub> allowance allocations.

(1) The administrator shall record the NO<sub>x</sub> allowances for 2004 in the NO<sub>x</sub> budget unit's compliance accounts and the allocation set-asides, as allocated under rule [3745-14-05](#) of this chapter. The administrator shall also record the NO<sub>x</sub> allowances allocated under paragraph (I)(1)(a) of rule [3745-14-09](#) of the Administrative Code for each NO<sub>x</sub> budget opt-in unit in its compliance account.

(2) Each year, after the administrator has made all deductions from a NO<sub>x</sub> budget unit's compliance account and the overdraft account pursuant to paragraph (E) of rule 3745-14-06 of the Administrative Code, the administrator shall record NO<sub>x</sub> allowances, as allocated to the unit under rule [3745-14-05](#) of the Administrative Code or paragraph (I)(1)(b) of rule [3745-14-09](#) of the Administrative Code, in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the administrator shall also record NO<sub>x</sub> allowances, as allocated under rule [3745-14-05](#) of the Administrative Code, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(3) When allocating NO<sub>x</sub> allowances to and recording them in an account, the administrator shall assign each NO<sub>x</sub> allowance a unique identification number that shall include digits identifying the year for which the NO<sub>x</sub> allowance is allocated.

(E) Compliance.

(1) 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 a control period in a given year only if the NO<sub>x</sub> allowances:

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

(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 control period or are transferred into the compliance account or overdraft account by a NO<sub>x</sub> allowance transfer correctly submitted for recording under paragraph (A) of rule [3745-14-07](#) of the Administrative Code by the NO<sub>x</sub> allowance transfer deadline for that control period.

(2) Deductions for compliance.

(a) Following the recording, in accordance with paragraph (B) of rule [3745-14-07](#) of the Administrative Code, of NO<sub>x</sub> allowance transfers submitted for recording 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 a control period, the administrator shall deduct NO<sub>x</sub> allowances available under paragraph (E)(1) of this rule to cover the unit's NO<sub>x</sub> emissions, as determined in accordance with rule [3745-14-08](#) of the Administrative Code, or to account for actual utilization under paragraph (C)(5) of rule [3745-14-05](#) of the Administrative Code, for the control period as follows:

(i) From the compliance account; and

(ii) Only if no more NO<sub>x</sub> allowances available under paragraph (E)(1) of this rule remain in the compliance account, from the overdraft account. [In deducting allowances for units at the source from the overdraft account, the administrator shall 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. Account numbers shall be sorted beginning with the leftmost character and ending with the rightmost character and the letter characters assigned values in alphabetical order and less than all numeric characters.]

(b) The administrator shall deduct NO<sub>x</sub> allowances first under paragraph (E)(2)(a)(i) of this rule and then under paragraph (E)(2)(a)(ii) of this rule:

(i) Until the number of NO<sub>x</sub> allowances deducted for the control period equals the number of tons of NO<sub>x</sub> emissions, determined in accordance with rule [3745-14-08](#) of the Administrative Code, from the unit for the control period for which compliance is being determined, plus the number of NO<sub>x</sub> allowances required for deduction to account for actual utilization under paragraph (C)(5) of rule [3745-14-05](#) of the Administrative Code for the control period; or

(ii) Until no more NO<sub>x</sub> allowances available under paragraph (E)(1) of this rule remain in the respective account.

(3) Identification of NO<sub>x</sub> allowances by serial number.

(a) 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 paragraph (E)(2), (E)(4), (E)(5) or (E)(6) of this rule. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (A) of rule [3745-14-04](#) of the Administrative Code.

(b) The administrator shall deduct NO<sub>x</sub> allowances for a control period 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 paragraph (E)(3)(a) of this rule, or the overdraft account on a first-in-first-out accounting basis in the following order:

- (i) Those NO<sub>x</sub> allowances that were allocated for the control period to the unit under rule [3745-14-05](#) or [3745-14-09](#) of the Administrative Code;
- (ii) Those NO<sub>x</sub> allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to rule [3745-14-07](#) of the Administrative Code, in order of their recorded date;
- (iii) Those NO<sub>x</sub> allowances that were allocated for a prior control period to the unit under rule [3745-14-05](#) or [3745-14-09](#) of the Administrative Code; and
- (iv) Those NO<sub>x</sub> allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to rule [3745-14-07](#) of the Administrative Code, in order of their recorded date.

(4) Deductions for excess emissions.

(a) After making the deductions for compliance under paragraph (E)(2) of this rule, the administrator shall 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 a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(b) If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the administrator shall deduct the required number of NO<sub>x</sub> allowances (i.e., three times the number of the unit's excess emissions) regardless of the control period for which they were allocated whenever NO<sub>x</sub> allowances are recorded in either account.

(c) Any allowance deduction required under paragraph (E)(4)(a) or (E)(4)(b) of this rule 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 the Clean Air Act or applicable state law. The following guidelines shall be followed in assessing fines, penalties or other obligations:

- (i) For purposes of determining the number of days of violation, if a NO<sub>x</sub> budget unit has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered;
- (ii) Each ton of excess emissions is a separate violation.

(d) For a unit with excess emissions for the 2008 control period, the requirements of paragraphs (E)(4)(a) to (E)(4)(c) of this rule shall apply except that the administrator shall deduct, from the compliance account covering the unit in the CAIR NO<sub>x</sub> ozone season trading program (in lieu of the accounts listed in paragraphs (E)(4)(a) and (E)(4)(b) of this rule), CAIR NO<sub>x</sub> ozone season allowances (in lieu of NO<sub>x</sub> allowances under the NO<sub>x</sub> budget trading program).

(5) In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with rule [3745-14-08](#) of the Administrative Code:

(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 a control period. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (A) of rule [3745-14-04](#) of the Administrative Code.

(b) Notwithstanding paragraph (E)(2)(b)(i) of this rule, the administrator shall 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 paragraph (E)(5)(a) of this rule, of the number of tons of NO<sub>x</sub> emissions, as determined in accordance with rule [3745-14-08](#) of the Administrative Code, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of allowances required for deduction to account for actual utilization under paragraph (C)(5) of rule [3745-14-05](#) of the Administrative Code for the control period.

(6) Each year starting in 2005, after the administrator has completed the designation of banked NO<sub>x</sub> allowances under paragraph (F)(1)(b) of this rule and before May first of the year, the administrator shall determine the extent to which banked NO<sub>x</sub> allowances otherwise available under paragraph (E)(1) of this rule are available for compliance in the control period for the current year, as follows:

(a) The administrator shall determine the total number of banked NO<sub>x</sub> allowances held in compliance accounts, overdraft accounts, or general accounts.

(b) If the total number of banked NO<sub>x</sub> allowances determined to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to ten per cent of the sum of the state trading program budgets for the control period, any banked NO<sub>x</sub> allowance may be deducted for compliance in accordance with paragraphs (E)(1) to (E)(5) of this rule.

(c) If the total number of banked NO<sub>x</sub> allowances determined to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten per cent of the sum of the state trading program budgets for the control period, any banked allowance may be deducted for compliance in accordance with paragraphs (E)(1) to (E)(5) of this rule, except as follows:

(i) The administrator shall determine the following ratio: 0.10 multiplied by the sum of the state trading program budgets for the control period divided by the total number of banked NO<sub>x</sub> allowances determined to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The administrator shall multiply the number of banked NO<sub>x</sub> allowances in each compliance account or overdraft account by the ratio determined under paragraph (E)(6)(c)(i) of this rule. The resulting product is the number of banked NO<sub>x</sub> allowances in the account that may be deducted for compliance in accordance with paragraphs (E)(1) to (E)(5) of this rule. Any banked NO<sub>x</sub> allowances in excess of the resulting product may be deducted for compliance in accordance with paragraphs (E)(1) to (E)(5) of this rule, except that, if such NO<sub>x</sub> allowances are used to make a deduction under paragraphs (E)(2) to (E)(5) of this rule, two (rather than one) such NO<sub>x</sub> allowances shall authorize one ton of NO<sub>x</sub> emissions during the control period and must be deducted for each deduction of one NO<sub>x</sub> allowance required under paragraphs (E)(2) to (E)(5) of this rule.

(7) The administrator shall record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to paragraphs (E)(2), (E)(4), (E)(5) and (E)(6) of this rule.

(F) Banking.

(1) NO<sub>x</sub> allowances shall be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(a) Any NO<sub>x</sub> allowance that is held in a compliance account, an overdraft account, or a general account shall remain in such account unless and until the NO<sub>x</sub> allowance is deducted or transferred pursuant to paragraphs (E) and (G) of this rule, paragraph (B) of rule [3745-14-04](#), and rules [3745-14-07](#) and [3745-14-09](#) of the Administrative Code.

(b) The administrator shall designate, as a “banked” NO<sub>x</sub> allowance, any NO<sub>x</sub> allowance that remains in a compliance account, an overdraft account, or a general account after the administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (E) of this rule (except deductions pursuant to paragraph (E)(4)(b) of this rule) and that were allocated for that control period or a control period in a prior year.

(G) The administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO<sub>x</sub> allowance tracking system account. Within ten business days of making such correction, the administrator shall notify the NO<sub>x</sub> authorized account representative for the account.

(H) Closing of general accounts.

(1) The NO<sub>x</sub> authorized account representative of a general account may instruct the administrator to close the account by submitting a statement requesting deletion of the account from the NO<sub>x</sub> allowance tracking system and by correctly submitting for recording, under paragraph (A) of rule [3745-14-07](#) of the Administrative Code, an allowance transfer of all NO<sub>x</sub> allowances in the account to one or more other NO<sub>x</sub> allowance tracking system accounts.

(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 shall 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 twenty business days after the notice is sent. The account shall be closed after the twenty-day period unless, before the end of the twenty-day period, the administrator receives a correctly submitted transfer of NO<sub>x</sub> allowances into the account under paragraph (A) of rule [3745-14-07](#) of the Administrative Code 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.

Effective: 10/18/2010

R.C. [119.032](#) review dates: 07/19/2013

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Prior Effective Dates: 7/18/2002, 11/24/2003, 7/19/2008

## **3745-14-07 NO<sub>x</sub> Allowance Transfers.**

### (A) Submission of NO<sub>x</sub> allowance transfers.

(1) The NO<sub>x</sub> authorized account representatives seeking recording 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:

- (a) the numbers identifying both the transferor and transferee accounts;
- (b) a specification by serial number of each NO<sub>x</sub> allowance to be transferred; and
- (c) the printed name and signature of the NO<sub>x</sub> authorized account representative of the transferor account and the date signed.

### (B) Recordation of NO<sub>x</sub> allowance transfer requests.

(1) Within five business days of receiving a NO<sub>x</sub> allowance transfer, except as provided in paragraph (B)(2) of this rule, the Administrator shall 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:

- (a) the transfer is correctly submitted under paragraph (A) of this rule; and
- (b) the transferor account includes each NO<sub>x</sub> allowance identified by serial number in the transfer.

(2) A NO<sub>x</sub> allowance transfer that is submitted for recording following the NO<sub>x</sub> allowance transfer deadline and that includes any NO<sub>x</sub> allowances allocated for a control period prior to or the same as the control period to which the NO<sub>x</sub> allowance transfer deadline applies shall not be recorded until after completion of the process of recording of NO<sub>x</sub> allowance allocations in paragraph (D) of rule [3745-14-06](#) of this chapter.

(3) Where a NO<sub>x</sub> allowance transfer submitted for recording fails to meet the requirements of paragraph (B)(1) of this rule, the Administrator shall not record such transfer.

### (C) Notification of transfers recorded.

(1) Within five business days of recording a NO<sub>x</sub> allowance transfer under paragraph (B) of this rule, the Administrator shall notify the NO<sub>x</sub> authorized account representative of both the transferor and transferee accounts.

(2) Within ten business days of receipt of a NO<sub>x</sub> allowance transfer that fails to meet the requirements of paragraph (B)(1) of this rule, the Administrator shall notify the NO<sub>x</sub> authorized account representatives of both accounts subject to the transfer of:

(a) a decision not to record the transfer, and

(b) the reasons for not recording the transfer.

(3) Nothing in this rule shall preclude the re-submission of a NO<sub>x</sub> allowance transfer for recording that failed to meet the requirements of paragraph (B)(1) of this rule upon a previous submission.

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Prior Effective Dates: 6/21/94

## **3745-14-08 Monitoring and Reporting.**

(A) General requirements.

(1) 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 and reporting requirements as provided in this rule and in subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in paragraph (B) of rule [3745-14-01](#) 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 in paragraph (B) of rule [3745-14-01](#) of this chapter.

(2) The owner or operator of each NO<sub>x</sub> budget unit and each unit for which an application for a NO<sub>x</sub> budget opt-in permit is submitted and not denied or withdrawn, as provided in rule [3745-14-09](#) of this chapter, shall meet the following requirements:

(a) install all monitoring systems required under this rule 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.)

(b) install all monitoring systems for monitoring heat input rate;

(c) successfully complete all certification tests required under paragraph (B) of this rule and meet all other requirements of this rule and 40 CFR Part 75 applicable to the monitoring systems under paragraphs (A)(2)(a) and (A)(2)(b) of this rule; and

(d) record, report and quality assure the data from the monitoring systems required under paragraphs (A)(2)(a) and (A)(2)(b) of this rule.

(3) The owner or operator shall meet the certification and other requirements of paragraphs (A)(2)(a) through (A)(2)(c) of this rule on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraphs (A)(2)(a) and (A)(2)(b) of this rule on and after the following dates:

(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 credit under paragraph (D) of rule [3745-14-05](#) of this chapter, by May 1, 2000;

(b) for the owner or operator of a NO<sub>x</sub> budget unit under paragraph (C)(1) of rule [3745-14-01](#) of this chapter that commences operation before January 1, 2003, and that is not subject to or does not meet the deadline under paragraph (A)(3)(a) of this rule, by May 1, 2003;

(c) for the owner or operator of a NO<sub>x</sub> budget unit under paragraph (C)(1)(a) of rule [3745-14-01](#) of this chapter that commences operation on or after January 1, 2003 and that reports on an annual basis under paragraph (E)(4) of this rule, by the later of the following dates:

(i) May 1, 2003; or

(ii) ninety days after the date on which the unit commences commercial operation.

(d) for the owner or operator of a NO<sub>x</sub> budget unit under paragraph (C)(1)(a) of rule [3745-14-01](#) of this chapter that commences operation on or after January 1, 2003 and that reports on a control period basis under paragraph (E)(4)(b)(i) of this rule, by no later than ninety days after the date on which the unit commences commercial operation, provided that this date is during a control period; (If this date does not occur during a control period, the applicable deadline is May 1 immediately following this date.)

(e) for the owner or operator of a NO<sub>x</sub> budget unit under paragraph (C)(1)(b) of rule [3745-14-01](#) of this chapter that commences operation on or after January 1, 2003 and that reports on an annual basis under paragraph (E)(4) of this rule, by the later of the following dates:

(i) May 1, 2003; or

(ii) one hundred and eighty days after the date on which the unit commences operation.

(f) for the owner or operator of a NO<sub>x</sub> budget unit under paragraph (C)(1)(b) of rule [3745-14-01](#) of this chapter that commences operation on or after January 1, 2003 and that reports on a control period basis under paragraph (E)(4)(b)(ii) of this rule, by one hundred and eighty days after the date on which the unit commences operation, provided that this date is during a control period; (If this date does not occur during a control period, the applicable deadline is May 1 immediately following this date.)

(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 paragraph (A)(3)(a), (A)(3)(b), (A)(3)(c), (A)(3)(d), (A)(3)(e), or (A)(3)(f) of this rule or rule [3745-14-09](#) of this chapter and that reports on an annual basis under paragraph (E)(4) of this rule, by ninety days after the date on which emissions first exit to the atmosphere through the new stack or flue;

(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 paragraph (A)(3)(a), (A)(3)(b), (A)(3)(c), (A)(3)(d), (A)(3)(e), or (A)(3)(f) of this rule or rule [3745-14-09](#) of this chapter and that reports on a control period basis under paragraph (E)(4)(b)(ii) of this rule, by ninety days after the date on which emissions first exit to the atmosphere through the new stack or flue, provided that this date is during a control period; (If this date does not occur during a control period, the applicable deadline is May 1 first immediately following this date.)

(i) for the owner or operator of a unit for which an application for a NO<sub>x</sub> budget opt-in unit is submitted and not denied or withdrawn, by the date specified under rule [3745-14-09](#) of this chapter.

(4) Reporting data prior to initial certification. The owner or operator of a NO<sub>x</sub> budget unit under paragraph (A)(3)(c), (A)(3)(d), (A)(3)(e), or (A)(3)(f) of this rule 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.

(5) Prohibitions.

(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 paragraph (F) of this rule.

(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 this rule and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

(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 this rule and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

(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, except under any one of the following circumstances:

(i) during the period that the unit is covered by an exemption under paragraphs (C)(2) and (D) of rule [3745-14-01](#) of this chapter that is in effect;

(ii) the owner or operator is monitoring emissions from the unit with another certified monitoring system approved by the director, in accordance with the applicable provisions of this rule and 40 CFR Part 75, for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) 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 paragraph (B)(2)(b) of this rule.

(B) Initial certification and recertification procedures.

(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:

(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, under paragraph (F)(1) of this rule, to the Administrator to determine if the approval applies under the NO<sub>x</sub> budget trading program;

(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 paragraph (B)(2) of this rule.

(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 paragraph (B)(3) or (B)(4) of this rule. 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.

(a) 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 paragraph (A)(3) of this rule. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this chapter in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.

(b) 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.

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

(i) The NO<sub>x</sub> authorized account representative shall submit to the Administrator, the U.S. EPA Region 5 office, and the director a written notice of the dates of certification in accordance with paragraph (D) of this rule.

(ii) The NO<sub>x</sub> authorized account representative shall submit to the Administrator, the U.S. EPA Region 5 office, and director a certification application for each monitoring system required under subpart H of 40 CFR Part 75. A complete certification application shall include the information specified in subpart H of 40 CFR Part 75.

(iii) Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined 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 one hundred twenty days after receipt by the director of the complete certification application for the monitoring system or component thereof under paragraph (B)(2)(c)(ii) of this rule. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, shall be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the director does not invalidate the provisional certification by

issuing a notice of disapproval within one hundred twenty days of receipt of the complete certification application by the director.

(iv) The director shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty days of receipt of the complete certification application under paragraph (B)(2)(c)(ii) of this rule. In the event the director does not issue such a notice within such one hundred twenty-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application shall be deemed certified for use under the NO<sub>x</sub> budget trading program.

(a) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the director shall issue a written notice of approval of the certification application within one hundred twenty days of receipt.

(b) A certification application shall be considered complete when all of the applicable information required to be submitted under paragraph (B)(2)(c)(ii) of this rule has been received by the director. If the certification application is not complete, then the director shall issue a written notice of incompleteness that sets a reasonable date by which the NO<sub>x</sub> authorized account representative shall 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 director may issue a notice of disapproval under paragraph (B)(2)(c)(iv)(c) of this rule. The one hundred twenty-day review period shall not begin prior to receipt of a complete certification application.

(c) If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this chapter, or if the certification application is incomplete and the requirement for disapproval under paragraph (B)(2)(c)(iv)(b) of this rule has been met, then the director shall issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the director and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification [as defined under 40 CFR 75.20(a)(3)]. The owner or operator shall follow the procedures for loss of certification in paragraph (B)(2)(c)(v) of this rule for each monitoring system or component thereof which is disapproved for initial certification.

(d) The director may issue a notice of disapproval of the certification status of a monitor in accordance with paragraph (C)(2) of this rule.

(v) If the director issues a notice of disapproval of a certification application under paragraph (B)(2)(c)(iv)(c) of this rule or a notice of disapproval of certification status under paragraph (B)(2)(c)(iv)(d) of this rule, then:

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

(i) for units that the owner or operator intends to monitor or monitors for NO<sub>x</sub> emission rate and heat input 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;

(ii) 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.

(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 (B)(2)(c)(i) and (B)(2)(c)(ii) of this rule;

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

(3) The owner or operator of a gas fired or oil fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 and not subject to an Acid Rain emission limitation shall meet the applicable general operating requirements of 40 CFR 75.10 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 paragraph (B)(2) of this rule, 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:

(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 submissions until the completion of the period for the director's review;

(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 paragraph (E)(4) of this rule, starting January 1 of the year after the year of such submission until the completion of the period for the director's review;

(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 period basis under paragraph (E)(4) of this rule, starting May 1 of the control period after the year of such submission until the completion of the period for the director's review.

(4) 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 in paragraph (B)(2) of this rule 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 in paragraph (B)(2)(c) of this rule. The requirements of 40 CFR 75.20(f) shall apply to such alternative monitoring system.

(C) Out of control periods.

(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.

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

(D) The NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit shall submit written notice of certification and recertification test dates to the director and the administrator in accordance with 40 CFR 75.61, except that if a unit is not subject to an Acid Rain emission limitation, notification is only required to be sent to the director.

(E) Record keeping and reporting.

(1) General provisions

(a) The NO<sub>x</sub> authorized account representative shall comply with all record keeping and reporting requirements in this rule and with the requirements of paragraph (A)(5) of rule [3745-14-02](#) of the Administrative Code.

(b) If the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit subject to an acid rain emission limitation who signed and certified any submission that is made under subpart F or G of 40 CFR Part 75 and which includes data and information required under this rule 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 shall also be signed by the designated representative or the alternative designated representative.

(2) Monitoring plans.

(a) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with the 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.

(b) The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with the 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.

(3) The NO<sub>x</sub> authorized account representative shall submit an application to the Administrator, U.S. EPA Region 5 office, and the director within forty-five days after completing all initial certification or recertification tests required under paragraph (B) of this rule including the information required under subpart H of 40 CFR Part 75.

(4) The NO<sub>x</sub> authorized account representative shall submit quarterly reports as follows:

(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 this rule, the NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) for a unit for which the owner or operator intends to apply or applies for the early reduction credit under paragraph (D) of rule [3745-14-05](#) of this chapter, the calendar quarter that includes the date of initial provisional certification under paragraph (B)(2)(c)(iii) or (B)(3) of this rule. Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or

(ii) for a unit that commences operation on or before May 1, 2003 and that is not subject to paragraph (E)(4)(a)(i) of this rule, the earlier of the calendar quarter that includes the date of initial provisional certification under paragraph (B)(2)(c)(iii) or (B)(3) of this rule 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

(iii) for a unit that commences operation after May 1, 2003, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

(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:

(i) 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 reporting deadlines specified in paragraph (E)(4)(a) of this rule; or

(ii) 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:

(a) for a unit for which the owner or operator intends to apply or applies for early reduction credit under paragraph (D) of rule [3745-14-05](#) of this chapter, the calendar quarter that includes the date of initial provisional certification under paragraph (B)(2)(c)(iii) or (B)(3) of this rule. Data shall be recorded and reported from the date and hour corresponding to the date and hour of provisional certification; or

(b) for a unit that commences operation on or before May 1, 2003 and that is not subject to paragraph (E)(4)(b)(i) of this rule, 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 certification under paragraph (B)(2)(c)(iii) or (B)(3) of this rule or the first hour of May 1, 2003; or

(c) for a unit that commences operation after May 1, 2003 and during a control period, 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

(d) for a unit that commences operation after May 1, 2003 and not during a control period, the calendar quarter covering the first control period 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 (B)(2)(c)(iii) or (B)(3) of this rule or the first hour of May 1 of the first control period after the unit commences operation.

(c) The NO<sub>x</sub> authorized account representative shall submit each quarterly report to the Administrator within thirty days following the end of the calendar quarter covered by the report.

Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR Part 75 and 40 CFR 75.64.

(i) For units subject to an Acid Rain emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR Part 75 for each NO<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.

(ii) For units not subject to an Acid Rain emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR Part 75 for each NO<sub>x</sub> budget unit (or group of units using a common stack).

(d) 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 compliance certification shall state that:

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

(ii) 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

(iii) for a unit that is reporting on a control period basis under paragraph (E)(4)(d)(ii) of this rule, 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 a control period and do not systematically underestimate NO<sub>x</sub> emissions.

#### (F) Petitions.

(1) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is subject to an Acid Rain emission limitation may submit a petition under 40 CFR 75.66 to the Administrator requesting approval to apply an alternative to any requirement of this rule.

(a) Application of an alternative to any requirement of this rule shall be in accordance with this rule only to the extent that the petition is approved by the Administrator in consultation with the director.

(b) Notwithstanding paragraph (F)(1)(a) of this rule, 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 shall be governed by paragraph (F)(2) of this rule.

(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 emission limitation may submit a petition under 40 CFR 75.66 to the director and the administrator requesting approval to apply an alternative to any requirement of this rule.

(a) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is subject to an Acid Rain emission limitation may submit a petition under 40 CFR 75.66 to the director and the administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a NO<sub>x</sub> concentration CEMS used under 40 CFR 75.71(a)(2).

(b) Application of an alternative to any requirement of this rule shall be in accordance with this rule only to the extent the petition under paragraph (F)(2) of this rule is approved by both the director and the Administrator.

(G) Additional requirements to provide heat input data for allocation purposes. 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.

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### **3745-14-09 NO<sub>x</sub> Budget Opt-in Units.**

(A) A unit that is not a NO<sub>x</sub> budget unit under paragraph (C) of rule [3745-14-01](#) of this chapter, vents all of its emissions to a stack, and is operating, may qualify, under this rule, to become a NO<sub>x</sub> budget opt-in unit. A unit that is a NO<sub>x</sub> budget unit under paragraph (C) of rule [3745-14-01](#) of this chapter, is covered by a retired unit exemption under paragraph (D) of rule [3745-14-01](#) of this chapter that is in effect, or is not operating is not eligible to become a NO<sub>x</sub> budget opt-in unit.

(B) Except as otherwise provided in this chapter, a NO<sub>x</sub> budget opt-in unit shall be treated as a NO<sub>x</sub> budget unit for purposes of applying rules [3745-14-01](#) to [3745-14-08](#) and [3745-14-10](#) of this chapter.

(C) A unit for which an application for a NO<sub>x</sub> budget opt-in permit is submitted and not denied or withdrawn, or a NO<sub>x</sub> budget opt-in unit, located at the same source as one or more NO<sub>x</sub> budget units, shall have the same NO<sub>x</sub> authorized account representative as such NO<sub>x</sub> budget units.

(D) Applying for a NO<sub>x</sub> budget opt-in permit.

(1) In order to apply for an initial NO<sub>x</sub> budget opt-in permit, the NO<sub>x</sub> authorized account representative of a unit qualified under paragraph (A) of this rule may submit the following to the director at any time, except as provided under paragraph (G)(7) of this rule:

(a) a complete NO<sub>x</sub> budget permit application under paragraph (C) of rule [3745-14-03](#) of this chapter;

(b) a monitoring plan submitted in accordance with paragraph (E)(2) of rule [3745-14-08](#) of this chapter; and

(c) a complete account certificate of representation under paragraph (D) of rule [3745-14-02](#) of this chapter, if no NO<sub>x</sub> authorized account representative has been previously designated for the unit.

(2) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget opt-in unit shall submit a complete NO<sub>x</sub> budget permit application under paragraph (C) of rule [3745-14-03](#) of this chapter to renew the NO<sub>x</sub> budget opt-in permit in accordance with paragraph (B)(3) of rule [3745-14-03](#) of this chapter and, if applicable, an updated monitoring plan in accordance with rule [3745-14-08](#) of this chapter.

(E) The director shall issue or deny a NO<sub>x</sub> budget opt-in permit for a unit for which an initial application for a NO<sub>x</sub> budget opt-in permit is submitted, in accordance with paragraph (A) of rule [3745-14-03](#) of this chapter and the following:

(1) The director shall determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO<sub>x</sub> budget opt-in permit. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO<sub>x</sub> emissions rate and heat input of the unit are monitored and reported

in accordance with rule [3745-14-08](#) of this chapter. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(2) If the director determines that the unit's monitoring plan is sufficient under paragraph (E)(1) of this rule and after completion of monitoring system certification under rule [3745-14-08](#) of this chapter, the NO<sub>x</sub> emissions rate and the heat input of the unit shall be monitored and reported in accordance with rule [3745-14-08](#) of this chapter for one full control period during which per cent monitor data availability is not less than ninety per cent and during which the unit is in full compliance with any applicable state or federal emissions or emission-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a NO<sub>x</sub> budget unit prior to issuance of a NO<sub>x</sub> budget opt-in permit covering the unit.

(3) Based on the information monitored and reported under paragraph (E)(2) of this rule, the units baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the units baseline NO<sub>x</sub> emissions rate shall be calculated as the unit's total NO<sub>x</sub> emissions (in pounds) for the control period divided by the units baseline heat rate.

(4) After calculating the baseline heat input and the baseline NO<sub>x</sub> emissions rate for the unit under paragraph (E)(3) of this rule, the director shall issue a draft NO<sub>x</sub> budget opt-in permit for the unit in accordance with paragraph (A) of rule [3745-14-03](#).

(5) Notwithstanding paragraphs (E)(1) to (E)(4) of this rule, if at any time before issuance of a draft NO<sub>x</sub> budget opt-in permit for the unit, the director determines that the unit does not qualify as a NO<sub>x</sub> budget opt-in unit under paragraph (A) of this rule, the director shall issue a draft denial of a NO<sub>x</sub> budget opt-in permit for the unit in accordance with paragraph (A) of rule [3745-14-03](#) of this chapter.

(6) A NO<sub>x</sub> authorized account representative of a unit may withdraw its application for a NO<sub>x</sub> budget opt-in permit under paragraph (D) of this rule at any time prior to the issuance of the final NO<sub>x</sub> budget opt-in permit. Once the application for a NO<sub>x</sub> budget opt-in permit is withdrawn, a NO<sub>x</sub> authorized account representative wanting to reapply shall submit a new application for a NO<sub>x</sub> budget permit under paragraph (D) of this rule.

(7) The effective date of the initial NO<sub>x</sub> budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NO<sub>x</sub> budget opt-in permit by the director. The unit shall be a NO<sub>x</sub> budget opt-in unit and a NO<sub>x</sub> budget unit as of the effective date of the initial NO<sub>x</sub> budget opt-in permit.

(F) NO<sub>x</sub> budget opt-in permit contents.

(1) Each NO<sub>x</sub> budget opt-in permit shall contain all elements required under paragraph (C) of rule [3745-14-03](#) of this chapter.

(2) Each NO<sub>x</sub> budget opt-in permit is deemed to incorporate automatically the definitions of terms under paragraph (B) of rule [3745-14-01](#) of this chapter and, upon recordation by the Administrator, under this rule and rule [3745-14-06](#) of this chapter, every allocation, transfer, or deduction of NO<sub>x</sub> allowances to or from the compliance accounts of each NO<sub>x</sub> budget opt-in unit covered by the NO<sub>x</sub> budget opt-in permit or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in unit is located.

(G) Withdrawal of opt-in units from NO<sub>x</sub> budget trading program.

(1) To withdraw from the NO<sub>x</sub> budget trading program, the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget opt-in unit shall submit to the director a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than ninety days prior to the requested effective date of withdrawal.

(2) Before a NO<sub>x</sub> budget opt-in unit covered by a request under paragraph (G)(1) of this rule may withdraw from the NO<sub>x</sub> budget trading program and the NO<sub>x</sub> budget opt-in permit may be terminated under paragraph (G)(5) of this rule, the following conditions shall be met:

(a) For the control period immediately before the withdrawal is to be effective, the NO<sub>x</sub> authorized account representative shall submit or shall have submitted to the director an annual compliance certification report in accordance with paragraph (A) of rule [3745-14-04](#) of this chapter.

(b) If the NO<sub>x</sub> budget opt-in unit has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator shall deduct from the NO<sub>x</sub> budget opt-in unit's compliance account, or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in unit is located, the full amount required under paragraph (E)(4) of rule [3745-14-06](#) of this chapter for the control period.

(c) After the requirements for withdrawal under paragraphs (G)(2)(a) and (G)(2)(b) of this rule are met, the Administrator shall deduct from the NO<sub>x</sub> budget opt-in unit's compliance account, or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in unit is located, NO<sub>x</sub> allowances equal in number to and allocated for the same or a prior control period as any NO<sub>x</sub> allowances allocated to that source under paragraph (I) of this rule for any control period for which the withdrawal is to be effective. The Administrator shall close the NO<sub>x</sub> budget opt-in units compliance account and shall establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO<sub>x</sub> budget opt-in unit. The NO<sub>x</sub> authorized account representative for the NO<sub>x</sub> budget opt-in unit shall become the NO<sub>x</sub> authorized account representative for the general account.

(3) A NO<sub>x</sub> budget opt-in unit that withdraws from the NO<sub>x</sub> budget trading program shall comply with all requirements under the NO<sub>x</sub> budget trading program concerning all years for which such NO<sub>x</sub> budget opt-in unit was a NO<sub>x</sub> budget opt-in unit, even if such requirements arise or shall be complied with after the withdrawal takes effect.

(4) Notification.

(a) After the requirements for withdrawal under paragraphs (G)(1), (G)(2), and (G)(3) of this rule are met, the director shall issue a notification to the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget opt-in unit of the acceptance of the withdrawal of the NO<sub>x</sub> budget opt-in unit as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(b) If the requirements for withdrawal under paragraphs (G)(1), (G)(2), and (G)(3) of this rule are not met, the director shall issue a notification to the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget opt-in unit that the NO<sub>x</sub> budget opt-in units request to withdraw is denied. If the

NO<sub>x</sub> budget opt-in units request to withdraw is denied, the NO<sub>x</sub> budget opt-in unit shall remain subject to the requirements for a NO<sub>x</sub> budget opt-in unit.

(5) After the director issues a notification under paragraph (G)(4)(a) of this rule that the requirements for withdrawal have been met, the director shall revise the NO<sub>x</sub> budget permit covering the NO<sub>x</sub> budget opt-in unit to terminate the NO<sub>x</sub> budget opt-in permit as of the effective date specified under paragraph (G)(4)(a) of this rule. A NO<sub>x</sub> budget opt-in unit shall continue to be a NO<sub>x</sub> budget opt-in unit until the effective date of the termination.

(6) If the director denies the NO<sub>x</sub> budget opt-in unit's request to withdraw, the NO<sub>x</sub> authorized account representative may submit another request to withdraw in accordance with paragraphs (G)(1) and (G)(2) of this rule.

(7) Once a NO<sub>x</sub> budget opt-in unit withdraws from the NO<sub>x</sub> budget trading program and its NO<sub>x</sub> budget opt-in permit is terminated under this rule, the NO<sub>x</sub> authorized account representative may not submit another application for a NO<sub>x</sub> budget opt-in permit under paragraph (D) of this rule for the unit prior to the date that is two years after the date on which the terminated NO<sub>x</sub> budget opt-in permit became effective.

(H) Change in regulatory status of NO<sub>x</sub> budget opt-in units.

(1) When a NO<sub>x</sub> budget opt-in unit becomes a NO<sub>x</sub> budget unit under paragraph (C) of rule [3745-14-01](#) of this chapter, the NO<sub>x</sub> authorized account representative shall notify in writing the director and the administrator of such change in the NO<sub>x</sub> budget opt-in units regulatory status, within thirty days of such change.

(2) Director's and Administrator's action.

(a) When the NO<sub>x</sub> budget opt-in unit becomes a NO<sub>x</sub> budget unit, the director shall revise the NO<sub>x</sub> budget opt-in unit's NO<sub>x</sub> budget opt-in permit to meet the requirements of a NO<sub>x</sub> budget permit under paragraph (D) of rule [3745-14-03](#) of this chapter as of an effective date that is the date on which such NO<sub>x</sub> budget opt-in unit becomes a NO<sub>x</sub> budget unit.

(b) The Administrator shall deduct from the compliance account for the NO<sub>x</sub> budget unit under paragraph (H)(2)(a) of this rule, or the overdraft account of the NO<sub>x</sub> budget source where the unit is located, NO<sub>x</sub> allowances equal in number to and allocated for the same or a prior control period as:

(i) any NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> budget unit (as a NO<sub>x</sub> budget opt-in unit) under paragraph (I) of this rule for any control period after the last control period during which the unit's NO<sub>x</sub> budget opt-in permit was effective; and

(ii) if the effective date of the NO<sub>x</sub> budget permit revision under paragraph (H)(2)(a) of this rule is during a control period, the NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> budget unit (as a NO<sub>x</sub> budget opt-in unit) under paragraph (I) of this rule for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (H)(2)(a) of this rule, divided by the total number of days in the control period.

(c) The NO<sub>x</sub> authorized account representative shall ensure that the compliance account of the NO<sub>x</sub> budget unit under paragraph (H)(2)(a) of this rule, or the overdraft account of the NO<sub>x</sub> budget source where the unit is located, includes the NO<sub>x</sub> allowances necessary for completion

of the deduction under paragraph (H)(2)(b) of this rule. If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the administrator shall deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(i) For every control period during which the NO<sub>x</sub> budget permit revised under paragraph (H)(2)(a) of this rule is effective, the NO<sub>x</sub> budget unit under paragraph (H)(2)(a) of this rule shall be treated, solely for purposes of NO<sub>x</sub> allowance allocations under paragraph (C) of rule [3745-14-05](#) of this chapter, as a unit that commenced operation on the effective date of the NO<sub>x</sub> budget permit revision under paragraph (H)(2)(a) of this rule and shall be allocated NO<sub>x</sub> allowances under paragraph (C) of rule [3745-14-05](#) of this chapter.

(ii) Notwithstanding paragraph (H)(2)(c)(i) of this rule, if the effective date of the NO<sub>x</sub> budget permit revision under paragraph (H)(2)(a) of this rule is during a control period, the following number of NO<sub>x</sub> allowances shall be allocated, under paragraph (C) of rule [3745-14-05](#) of this chapter, to the NO<sub>x</sub> budget unit under paragraph (H)(2)(a) of this rule for the control period; the number of NO<sub>x</sub> allowances otherwise allocated to the NO<sub>x</sub> budget unit under paragraph (C) of rule [3745-14-05](#) of this chapter for the control period multiplied by the ratio of the number of days in the control period, starting with the effective date of the permit revision under paragraph (H)(2)(a) of this rule, divided by the total number of days in the control period.

(d) When the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget opt-in unit does not renew its NO<sub>x</sub> budget opt-in permit under paragraph (D)(2) of this rule, the Administrator shall deduct from the NO<sub>x</sub> budget opt-in units compliance account, or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in unit is located, NO<sub>x</sub> allowances equal in number to and allocated for the same or a prior control period as any NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> budget opt-in unit under paragraph (I) of this rule for any control period after the last control period for which the NO<sub>x</sub> budget opt-in permit is effective. The NO<sub>x</sub> authorized account representative shall ensure that the NO<sub>x</sub> budget opt-in source's compliance account or the overdraft account of the NO<sub>x</sub> budget source where the NO<sub>x</sub> budget opt-in unit is located includes the NO<sub>x</sub> allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the administrator shall deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(e) After the deduction under paragraph (H)(2)(d) of this rule is completed, the Administrator shall close the NO<sub>x</sub> budget opt-in units compliance account. If any NO<sub>x</sub> allowances remain in the compliance account after completion of such deduction and any deduction under paragraph (E) of rule [3745-14-06](#) of this chapter, the Administrator shall close the NO<sub>x</sub> budget opt-in unit's compliance account and shall establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO<sub>x</sub> budget opt-in unit. The NO<sub>x</sub> authorized account representative for the NO<sub>x</sub> budget opt-in unit shall become the NO<sub>x</sub> authorized account representative for the general account.

(I) NO<sub>x</sub> allowance allocations to opt-in units.

(1) NO<sub>x</sub> allowance allocation.

(a) By April 1 immediately before the first control period for which the NO<sub>x</sub> budget opt-in permit is effective, the director shall allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in unit and

submit to the Administrator the allocation for the control period in accordance with paragraph (I)(2) of this rule.

(b) By no later than April 1, after the first control period for which the NO<sub>x</sub> budget opt-in permit is in effect, and April 1 of each year thereafter, the director shall allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in unit, and submit to the administrator allocations for the next control period, in accordance with paragraph (I)(2) of this rule.

(2) For each control period for which the NO<sub>x</sub> budget opt-in unit has an approved NO<sub>x</sub> budget opt-in permit, the NO<sub>x</sub> budget opt-in unit shall be allocated NO<sub>x</sub> allowances in accordance with the following procedures:

(a) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations shall be the lesser of:

(i) the NO<sub>x</sub> budget opt-in unit's baseline heat input determined pursuant to paragraph (E)(3) of this rule; or

(ii) the NO<sub>x</sub> budget opt-in unit's heat input, as determined in accordance with rule [3745-14-08](#) of this chapter, for the control period in the year prior to the year of the control period for which the NO<sub>x</sub> allocations are being calculated.

(b) The director shall allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in unit in an amount equaling the heat input (in mmBtu) determined under paragraph (I)(2)(a) of this rule multiplied by the lesser of:

(i) the NO<sub>x</sub> budget opt-in units baseline NO<sub>x</sub> emissions rate (in lb/mmBtu) determined pursuant to paragraph (E)(3) of this rule; or

(ii) the most stringent state or federal NO<sub>x</sub> emissions limitation applicable to the NO<sub>x</sub> budget opt-in unit during the control period.

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### **3745-14-10 Alternative Compliance Plans.**

Nothing in this chapter shall prohibit the owner or operator of a NO<sub>x</sub> budget unit from participating in future programs under federal rules that allow for multi-pollutant reductions in place of the requirements of the rules of this chapter.

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### **3745-14-11 Portland Cement Kilns.**

(A) The requirements of this rule shall apply only to following types of portland cement kilns with process rates of at least that indicated below:

- (1) for long dry kilns, 12 tons per hour;
- (2) for long wet kilns, 10 tons per hour;
- (3) for preheater kilns, 16 tons per hour; and
- (4) for precalciner and preheater/precalciner kilns, 22 tons per hour.

(B) After April 30, 2004, an owner or operator of any portland cement kiln subject to this rule shall not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 through September 30 with low-NO<sub>x</sub> burners, mid-kiln system firing, or alternative control techniques, subject to approval by the Administrator, that achieve at least the same emissions decreases as low-NO<sub>x</sub> burners or mid-kiln system firing.

(C) Reporting, monitoring, and record keeping requirements.

(1) Any owner or operator subject to the requirements of paragraph (B) of this rule shall comply with the following requirements:

(a) by May 1, 2004, submit to the director and Administrator the identification number and type of each unit subject to the rule, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating the compliance of the unit with this rule; and

(b) submit a report documenting for each unit the total NO<sub>x</sub> emissions from May 1 through September 30 of each year to the director and administrator by October 31 of each year, beginning in 2004.

(2) Any owner or operator of a unit subject to paragraph (B) of this rule shall complete an initial performance test and subsequent annual testing consistent with the requirements of 40 CFR Part 60, Appendix A, Methods 1, 2, 3 and 4 and Method 7, 7A, 7C, 7D, or 7E.

(3) Any owner or operator of a unit subject to paragraph (B) of this rule shall produce and maintain records which shall include, but are not limited to:

(a) the emissions, in pounds of NO<sub>x</sub> per ton of clinker produced from each affected cement kiln;

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

(c) the results of any performance testing; and

(d) daily cement kiln production records.

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

(D) The requirements of this rule shall not apply to the following periods of operation:

(1) start-up and shutdown periods and periods of malfunction, not to exceed thirty-six consecutive hours; and

(2) Regularly scheduled maintenance activities.

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R.C. [119.032](#) review dates: 03/31/2005

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Prior Effective Date: 6/21/94

## **3745-14-12 Stationary Internal Combustion Engines.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the "Incorporation by Reference" section at the end of rule [3745-14-01](#) of the Administrative Code.]

(A) The requirements of this rule apply to the owner or operator of any large NO<sub>x</sub> SIP call engine.

(B) Compliance plan.

(1) After May 1, 2007, an owner or operator of a large NO<sub>x</sub> SIP call engine shall not operate the engine in the 2007 control period or any subsequent year's control period unless the owner or operator complies with the requirements of a compliance plan which meets the provisions listed below.

(a) The compliance plan shall be approved by the director.

(b) The compliance plan shall demonstrate enforceable emission reductions from one or more stationary internal combustion engines equal to or greater than the facility seasonal NO<sub>x</sub> 2007 tonnage reduction.

(c) The compliance plan may cover some or all engines at an individual facility or at several facilities or at all facilities in the state of Ohio that are in control of the same owner/operator.

(d) The compliance plan shall be submitted to the director by May 1, 2006.

(e) The compliance plan may include credit for decreases in NO<sub>x</sub> emissions from large NO<sub>x</sub> SIP call engines in the state of Ohio due to NO<sub>x</sub> control equipment. Credit may also be included for decreases in NO<sub>x</sub> emissions from other engines in the state of Ohio due to NO<sub>x</sub> control equipment not reflected in the 2007 base NO<sub>x</sub> emissions in the NO<sub>x</sub> SIP call engine inventory.

(f) The compliance plan shall include the following items:

(i) list of engines subject to the plan, including the engine's manufacturer, model, facility location address, and facility identification number;

(ii) the projected control period hours of operation for each engine and supporting documentation;

(iii) a description of the NO<sub>x</sub> emissions control installed, or to be installed, on each engine and documentation to support the projected NO<sub>x</sub> emission rates;

(iv) the past and projected NO<sub>x</sub> emission rates for each affected engine in g/bhp-hr;

(v) a numerical demonstration that the emission reductions obtained from all engines included under the plan will be equivalent to or greater than the owner/operator's facility seasonal NO<sub>x</sub> 2007 tonnage reduction, based on the difference between the past NO<sub>x</sub> emission rate and the projected NO<sub>x</sub> emission rate multiplied by the projected operating hours for each affected engine, and taking into account any credit under paragraph (B)(1)(e) of this rule; and

(vi) provisions for monitoring, reporting, and recordkeeping for each affected engine.

(2) The projected NO<sub>x</sub> emission rate in g/bhp-hr for each affected engine shall be included in a federally enforceable permit.

(C) Any owner or operator subject to the requirements of paragraph (B) of this rule shall comply with the following requirements:

(1) Monitoring requirements:

(a) Complete an initial performance test consistent with the requirements of 40 CFR Part 60, Appendix A, following installation of emission controls required to achieve the emission rate limit specified in paragraph (B)(2) of this rule.

(b) Perform periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of a source's compliance with the emission rate limit specified in paragraph (B)(2) of this rule. Such periodic monitoring may include either:

(i) performance tests consistent with the requirements of 40 CFR Part 60, Appendix A, or portable monitors using ASTM D6522-00;

(ii) a parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each engine's emissions are consistent with the requirements of paragraph (B)(2) of this rule;

(iii) a predictive emissions measurement system that relies on automated data collection from instruments; or

(iv) a continuous emission monitoring system that complies with 40 CFR Part 60 or 75.

(2) Record keeping requirements:

(a) Maintain all records necessary to demonstrate compliance with the requirements of this rule for a period of two calendar years at the plant at which the subject engine is located. The records shall be made available to the director and Administrator upon request.

(b) For each engine subject to the requirements of this rule, the owner or operator shall maintain records of:

(i) identification and location of each engine subject to the requirements of this rule;

(ii) calendar date of record;

(iii) the number of hours the unit is operated during each control period compared to the projected operating hours;

(iv) type and quantity of fuel used; and

(v) the results of all compliance tests.

(3) Reporting requirements. Any owner or operator subject to the requirements of this rule shall submit results of all compliance tests to the director.

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